

DIRECT EXAMINATION

1
2 BY MR. BANDAS:

3 Q. Good afternoon. Would you please state your name for the
4 record.

5 A. John O'Hagan.

6 Q. John, how are you feeling?

7 A. I've felt better.

8 Q. I understand. Before we get started, I want to clarify a
9 couple of issues that have come up so far in the case. Yes or
10 no, does ROWMEC owe Gyro-Trac \$694,000 -- 710 dollars and 84
11 cents?

12 A. No, it does not.

13 Q. Does ROWMEC owe anywhere near that amount of money?

14 A. No, sir.

15 Q. Did ROWMEC ever even come close to going over the
16 500,000-dollar credit limit that's been talked about in this
17 case?

18 A. No, sir.

19 Q. And we will get into more detail about that later,
20 Mr. O'Hagan. How are you currently employed?

21 A. By ROWMEC Equipment Company.

22 Q. And what is your position with ROWMEC?

23 A. I'm vice president.

24 Q. Are you a corporate representative for ROWMEC in this
25 lawsuit?

Exhibit A

1 A. Yes, sir.

2 Q. And generally speaking what kind of business is ROWMEC?

3 A. We build right-of-way clearing equipment -- speciality
4 right-of-way clearing equipment.

5 Q. And tell me what you mean by right-of-way clearing.

6 A. Mainly over the years that's what we concentrated on was
7 clearing electrical oil and gas right of ways and we developed
8 equipment that worked well in those situations.

9 Q. All right. Is ROWMEC a family-owned business?

10 A. Yes, sir.

11 Q. Who all owns this business?

12 A. My father, William Stanley O'Hagan, Sr.; my mother, Joan
13 O'Hagan; my older brother, William Stanley O'Hagan, Jr.;
14 myself; and my younger brother, Scott O'Hagan.

15 Q. And where is the company located?

16 A. Conroe, Texas.

17 Q. And how long has the company been in Conroe?

18 A. 28 years.

19 Q. How did you end up in Conroe?

20 A. Well, I grew up in New Jersey. I went into the Marine
21 Corps after New Jersey and then rejoined the family business
22 in Conroe. They moved while I was in the service.

23 Q. And just very briefly a little bit about your personal
24 background, John. Where do you live right now?

25 A. Conroe, Texas.

1 Q. Again, how long have you been in Conroe?

2 A. 29 years.

3 Q. And how far did you get in high school?

4 A. I graduated high school.

5 Q. And where did you go to high school?

6 A. Allentown, New Jersey.

7 Q. And what did you do after high school?

8 A. I enlisted in the Marine Corps.

9 Q. How long were you in the Marine Corps?

10 A. I was in the Marine Corps for three years.

11 Q. What did you do in the Marine Corps?

12 A. I was a combat engineer.

13 Q. And after you got out of the Marine Corps, where did you
14 go?

15 A. My wife, my son, and I moved to Conroe, Texas to join the
16 family business.

17 Q. And what year was that?

18 A. 1978.

19 Q. And what was the family business then?

20 A. Well, it was land clearing. But it started out basically
21 as the old style of land clearing -- bulldozers, excavators,
22 piling and burning.

23 Q. And who started the family business?

24 A. It was my father.

25 Q. And when was that business started?

1 A. Actually in the '60s he actually started the business
2 himself in New Jersey.

3 Q. And what kind of business was it when your father started
4 the business?

5 A. Again, he did land clearing with bulldozers, excavators,
6 machines like that.

7 Q. If you would, so we can understand how the technology has
8 developed, what was it like to clear right of ways or land
9 with bulldozers and buckets and cranes and that kind of thing?

10 A. Actually before right-of-way clearing we did large
11 property clearing where you would pile and burn everything.
12 So, they would push up huge piles of trees with bulldozers and
13 burn it. And that's how it was done then.

14 Q. All right. When your father started the business -- and
15 what's your father's name?

16 A. Stanley O'Hagan, Sr.

17 Q. And when your father started the business, what was the
18 name of the company then?

19 A. F & S Excavating.

20 Q. What kind of customers did the company have back then
21 when it was started?

22 A. Back in New Jersey in the early days it was mostly
23 developers.

24 Q. And how are you introduced to the family business?

25 A. Well, other than begging him to take us with him on

1 weekends is when we started, maybe 8, 9 years old.

2 Q. Did your dad eventually put you to work?

3 A. Sure. When we were a little bit older he used to take us
4 with him, again, on weekends or in the summertime to watch
5 fires while the men got some sleep, or watch pumps, whatever
6 we could do to let them get some sleep.

7 Q. What do you mean by watching pumps and watching fires?

8 A. Well, again back in the old days when they started these
9 huge fires, you had to keep them going. You couldn't let them
10 go out. They used big fans that blew diesel onto the fires at
11 night. So, at night we would kind of just make sure nothing
12 was going wrong while some of the men would get some sleep.

13 Q. And how old were you, Mr. O'Hagan, when your father put
14 you to work?

15 A. 9, 10, around that age.

16 Q. And how old are you now?

17 A. I'm 50.

18 Q. And other than your time in the Marine Corps, have you
19 always been involved in the family business?

20 A. Yes, sir.

21 Q. When you first started out as a young man, how was the
22 pay, working for the company?

23 A. Until after I got out of the Marine Corps, married and
24 moved back here to Texas, there was no pay unless you consider
25 room and board.

1 Q. I got it. And over the years what jobs have you done in
2 the land clearing business?

3 A. Well, when you work for my father in his business you
4 start off at the bottom. He wanted us to know every aspect of
5 the business. So, we started as laborers, fuelers, grease
6 monkeys, whatever it took.

7 Q. What's a fueler, for example? What did you do as a
8 fueler?

9 A. A fueler is the guy that stays at the end of the day
10 after the operators go home and make sure that the machines
11 are ready to go again the next day, whatever it took.

12 Q. And what does it sometimes take?

13 A. It could be anything from just fueling it up to pulling
14 the cylinder head off, whatever it took, to make sure the
15 machine was ready to go the next day.

16 Q. Over the years can you really think of any job that you
17 haven't done in the land clearing business?

18 A. Not much secretarial work.

19 Q. I understand. Did your father train you in this
20 business?

21 A. Yes. My father and his brothers and his employees also
22 helped.

23 Q. How did they train you?

24 A. Mostly on-the-job training.

25 Q. What was your father's background before he got into this

1 business?

2 A. He had an 8th grade education, basically the same thing,
3 on-the-job training, he learned as he went.

4 Q. Is your father actively involved in the business now?

5 A. Very little. He's basically retired now.

6 Q. Is it something that he's pretty much passed on to you
7 and your siblings?

8 A. Yes.

9 Q. Now, if you would, Mr. O'Hagan, tell me how the family
10 business got to Texas.

11 A. In the early '70s we had -- we had the initial fuel
12 shortage and it kind of slowed everything down on the east
13 coast. My father had come before that to Texas and saw the
14 work that was going on here back then and he thought it would
15 be a better place for us to run our heavy equipment business.

16 Q. What was the name of the business when you first got to
17 Texas?

18 A. O'Hagan's Tree Eater Service.

19 Q. Where was it based?

20 A. In Conroe, Texas.

21 Q. And what did O'Hagan's Tree Eater Service do?

22 A. For a short time we started off the same way with the
23 heavy equipment but we had brought some of the machines that
24 we had developed back in New Jersey that would shred brush and
25 trees with us out here and we saw what looked like a pretty

1 good niche in the pipeline and electric utility right-of-way
2 clearing. So, we started heading in that direction.

3 Q. And tell me -- or tell us if you would what were the
4 machines that were being developed back in New Jersey that you
5 brought to Texas with the company or that the company brought
6 to Texas?

7 A. Back then we called them tree eaters and they were
8 drum-type machines with knives on them that would actually
9 walk up to the trees or brush, cut it off, cut it down, and
10 chip it up down so you didn't have to haul it or burn it.

11 Q. All right. And when the company came to Texas, what were
12 the customers that it was going after?

13 A. We did quite a bit of work for Gulf, which later turned
14 into Chevron, Houston Power and Light, Texaco, quite a few of
15 the major oil companies here in the area.

16 Q. In your experience are there a lot of right of ways in
17 Texas? Are there a lot of land clearing opportunities in
18 Texas?

19 A. Yes, and it's on a continuing basis because the stuff
20 grows back. So, you have to cut it basically on a yearly
21 basis, usually on a rotation.

22 Q. And since the business has been in Texas, do you believe
23 that the number of pipelines and utilities we have in Texas
24 are indicative of what the business opportunities are for your
25 type of business in Texas?

1 A. Yes, I think so.

2 Q. We some of it in opening. But basically how did the
3 company evolve from being, you know, basically a service-type
4 company to developing and selling machines?

5 A. Well, we started just doing the contracting work
6 ourselves. But as time went on, we had more and more people.
7 As we spread out and more people saw the machine work, we had
8 more and more people ask if they could buy the machines and if
9 so where they could buy them. So, we started developing them
10 to sell.

11 Q. And when you say developing them, what kinds of machines
12 are you talking about?

13 A. The tree eaters.

14 Q. All right. And what was the difference between your tree
15 eater and what was out there in the marketplace before you
16 developed the tree eater?

17 A. Before that mostly it was heavy duty brush hog mowers
18 like you'd see on the back of tractors on farms. There were
19 heavier duty versions that would take some brush and trees.

20 Q. What do you mean by brush hog?

21 A. These were horizontal-type cutters that had a deck under
22 them with two to four individual blades, heavy steel blades,
23 that would spin and blow things all over the place. They were
24 very dangerous.

25 Q. Are you basically describing a big lawnmower?

1 A. Yes.

2 Q. And how were those used to cut down trees and to cut down
3 right of ways?

4 A. They would cut down similarly. But, again, they would
5 blow debris all over the place and they left usually a sharp
6 edge on whatever they were cutting. So, you couldn't actually
7 drive back over where they had done the work. You would have
8 to wait several years for the stumps to rot.

9 Q. Before you could get back through there?

10 A. Yes.

11 Q. So, what was it about that technology that prompted your
12 family business to start working on a new type of technology?

13 A. Well, we had started on it in New Jersey. They outlawed
14 burning on the East Coast back in late '60s, like '69. So, we
15 tried to incorporate more into our business instead of just
16 burning or then it was going to hauling it off to landfills.
17 We were trying to come up with a machine that would reduce the
18 amount of wood we would either have to haul off or burn.

19 Q. And, if you would, describe what that machine looked
20 like. What was the major technological features of it?

21 A. It was a drum, 5, 6-foot long and it was usually 18 to 20
22 inches in diameter. It had teeth on the face that would swing
23 out with the inertia of the drum spinning. First we used them
24 mostly on farm tractors but then it evolved as we worked on
25 them.

1 Q. What type of farm tractors were you are putting your
2 equipment on when your company was first developing this
3 technology?

4 A. John Deere, International, basically any farm tractor.
5 The major drawback back then is they were all -- they had
6 mechanical clutches. So, you had to ride the clutch a lot to
7 make them work. But that's what we had at that time.

8 Q. And when did ROWMEC first start putting cutter heads on
9 different types of tractors?

10 A. After we moved here to Texas.

11 Q. And what year was that approximately when ROWMEC first
12 started putting the drum-type cutter head on tractors?

13 A. As soon as we moved here in '78 on farm tractors but then
14 it evolved a few years after that. Some tractors started
15 coming out that had hydrostatic drive and were more geared
16 toward what we were doing. One of the first was a New Holland
17 that first came out with the hydrostatic drive.

18 Q. And was that one of the first tractors that ROWMEC
19 started putting its cutter head on?

20 A. Yes.

21 Q. And if you would, just so we understand as we're going
22 forward, describe how the cutter head works as it's going
23 through and clearing a right of way or clearing vegetation?

24 A. Actually it will drive up to -- under brush is basically
25 like running a brush hog. You just drive over it and it

1 destroys it. Bigger trees, you drive up -- and you have to
2 take your time -- you easily start to cut through it. As the
3 tree starts to lean, then you drive up on it and take it all
4 the way down, and it just chips it up so that it's smooth
5 chips on the ground.

6 Q. And this cutter head, does it work by spinning?

7 A. Yes. About 2200 RPM's it spins.

8 Q. What is it that does the actual cutting of the tree?

9 A. The actual stirrup-shaped cutters that are hooked to the
10 outside of the rooter with a bar. Depending on the width of
11 the cutter head, there can be anywhere from 38 teeth to 54
12 teeth, something like that.

13 Q. All right. And when did the company start selling some
14 of the equipment that it was manufacturing for itself?

15 A. I think it would have been early to mid '90s is when we
16 actually started selling them.

17 Q. When did the company come to be known as ROWMEC?

18 A. I think it was around 1995.

19 Q. All right. And then when is it that the company really
20 started focusing on equipment design and manufacture?

21 A. Between '95 and '99, because I believe we sold the
22 construction part of the company in '99 or 2000. We were
23 starting to bump into too many of our customers at bid
24 meetings and stuff. So, we had to make a decision to either
25 do the contracting and not the selling or the selling and not

1 the contracting.

2 Q. If you would, explain a little bit more what you mean by
3 selling or contracting.

4 A. Well, we had sold a pretty good amount of machines in the
5 Houston and Texas locals to where we lived. And they were
6 starting to be more known. So, we started running into more
7 of our customers actually at bid meetings and stuff for the
8 oil companies and electric companies. So, then it was time to
9 make a decision to do one or the other, either go straight
10 into sales or stay with the contracting. We chose to go into
11 the sales.

12 Q. All right. And so, in the mid 1990s is it fair to say
13 that ROWMEC started evolving into more of a sales and
14 equipment manufacturing business?

15 A. Yes, sir.

16 Q. At that time, Mr. O'Hagan, what types of machinery was
17 ROWMEC making for sale?

18 A. We were making rubber tired mostly, all rubber tired. We
19 used again John Deere, New Holland, some Caterpillar, some
20 Tiger Cat. So, we were basically taking other peoples
21 tractors and modifying them and putting our cutter heads on
22 the front.

23 Q. Were you selling them as a complete unit?

24 A. Yes, sir. Although we did also sell cutter heads to some
25 people just to mount on what tractors they already had.

1 Q. When ROWMEC first started selling its cutter heads on
2 rubber track or rubber-tired-type machines? Did ROWMEC have
3 to do anything to arrange with the manufacturers of those
4 tractors your ability to put the cutter heads on it?

5 A. Yes. We had to do testing with the manufacturer to make
6 sure that our attachment wouldn't harm the tractor, that it
7 was still safe. So, we had to pass an inspection with all
8 them.

9 Q. And were those inspections geared towards, for example,
10 warranty issues?

11 A. Sure. To make sure that it wouldn't over load the
12 hydraulic system or over load the cooling system of the engine
13 or the drive system so that they wouldn't end up with
14 increased warranty issues on their machines.

15 Q. And who did that testing and certification for the
16 different companies?

17 A. Usually they would send people out to our shop and we
18 would hook up special testing equipment on the machines and
19 then take them out and actually run them for them to get their
20 own data together.

21 Q. All right. Then ultimately was it the companies that had
22 to give the final seal of approval to your equipment to your
23 equipment for you to be able to sell it on their tractors?

24 A. You always have the option just to buy it and put the
25 machine together and sell it but without their approval and

1 without their backing and without their warranty coverage.

2 Q. And why was it important for you to have the warranty
3 coverage when you sold their tractor with your cutter head?

4 A. It would cause you a lot of problems down the road. If
5 they didn't give you the backing and you still put your head
6 on there and sold the tractor and then it caused the tractor
7 to start having problems, you wouldn't have any backup from
8 the manufacturer.

9 Q. What companies backed you up and gave you the
10 certification to sell their tractors with your cutter head?

11 A. New Holland, John Deere. We were actually one of the
12 first companies with this type of equipment to ever be
13 approved by New Holland, John Deere, Caterpillar, Tiger Cat
14 and there's some others one, but I'm just not remembering.

15 Q. And before ROWMEC put its cutter head on these tractors,
16 were you aware of any other manufacturers or any other
17 companies that were putting in drum-type cutter heads on
18 tractors for land clearing?

19 A. No, sir.

20 Q. In focusing your attention on the time period before the
21 dealership arrangement was started with Gyro-Trac in this case
22 in September of 2003, and focusing on the time period before
23 that, over the years how many complete machines, meaning a
24 tractor with a cutter head, a complete machine, has ROWMEC
25 sold over the years?

1 A. Well over 150. We have one customer in the Houston area
2 that has over 40.

3 Q. And these are complete units, purpose-built machines that
4 you put together and you have put out in the marketplace?

5 A. Yes. They're not quite purpose built. They're still
6 machines that we take a supplier's tractor, we do some
7 modification to it, and then put our cutter head on the front.

8 Q. So, when ROWMEC started its dealership arrangement with
9 Gyro-Trac selling tractors with cutter heads as complete
10 machines, that wasn't a new business -- or -- was that a new
11 business for ROWMEC?

12 A. Not a new industry but a new business. Now we were -- we
13 would be able to take what's called a purpose-built machine,
14 which would be a machine that was built from the ground up as
15 a clearing machine, and be able to sell it into the
16 marketplace also being a track machine which is something we
17 hadn't done before.

18 Q. Again, focusing your attention on the time period before
19 the dealership that's at issue in this lawsuit which is
20 September of 2003, did ROWMEC also sell just cutter heads?

21 A. Yes.

22 Q. All right. For how long had ROWMEC just sold cutter
23 heads in the marketplace?

24 A. At or before we started selling complete machines.
25 Cutter heads is what we had to offer first.

1 Q. In addition to complete machines, how many just cutter
2 heads has ROWMEC sold over the years, again, before the
3 dealership at issue in this case?

4 A. Not counting the ones that were added to tractors,
5 75-plus just cutter heads.

6 Q. Now in the years that ROWMEC was selling complete
7 machines, meaning tractors with cutter heads, who were some of
8 ROWMEC's customers over the years?

9 A. Western Geophysical, Terra Services here in Houston,
10 we've sold some to the government of Tahiti, we've sold some
11 that are working in Africa, also in Venezuela. And I think
12 they were all for Western Geophysical, was one of the
13 companies that we sold quite a few machines to.

14 Q. Have you gone and demonstrated your equipment outside the
15 United States?

16 A. Yes, sir.

17 Q. Did you ever go outside the United States or anywhere to
18 try to sell equipment without demonstrating it?

19 A. No.

20 Q. Do you agree with what Mr. Flournoy said to sell these
21 machines you've got to be able to show them to people?

22 A. Yes, sir. Definitely to new customers.

23 Q. Where all have you demonstrated machines around the
24 world?

25 A. Tahiti, Malaysia. I didn't actually do the demos in

1 Africa but our machines were demoed in Africa and of course
2 all over the United States.

3 Q. All right. We've heard a little bit so far in this case
4 about your patents. I'd like to call to your attention to
5 Exhibit No. 20.

6 Mr. O'Hagan, what are we looking at here as
7 Plaintiff's Exhibit No. 20?

8 A. That's the patent document on our cutter tooth that fits
9 our cutter head.

10 Q. And when did you get this patent and --

11 MR. BANDAS: This area right here.

12 Does that refresh your recollection?

13 A. Yes, sir.

14 BY MR. BANDAS:

15 Q. When did you get this patent?

16 A. Looks like it was awarded in 1996.

17 Q. If you would, describe what it is -- what is the essence
18 of this invention?

19 A. That basically covers the cutter tooth that is mounted to
20 our cutter head that actually does the cutting.

21 Q. All right. And then --

22 MR. BANDAS: Mike, if you would, bring up
23 Plaintiff's Exhibit No. 21.

24 BY MR. BANDAS:

25 Q. What is Exhibit No. 21, Mr. O'Hagan?

1 A. That is the patent document on the cutter head that the
2 cutter tooth fits on.

3 MR. BANDAS: If you could, I'd like to focus up
4 here. If we could focus in there so we can get the time
5 period when this was issued.

6 BY MR. BANDAS:

7 Q. When was this patent issued?

8 A. November 27th of 2001.

9 Q. Mr. O'Hagan, who is identified as the inventor on both
10 these patents?

11 A. I am.

12 Q. Do you have any formal education past high school?

13 A. No, sir.

14 Q. Do you have any engineering degrees?

15 A. No.

16 Q. Have you ever taken any engineering courses?

17 A. No, sir.

18 Q. What did you have to do to get these patents?

19 A. When you come up with a concept, you have to have the
20 drawings done, you have to do the testing, and then you submit
21 all that into the patent office and they review it and check
22 it against other patents that are out there.

23 Q. Is that process called the examination process?

24 A. Yes.

25 Q. And how long did that process take with each of these

1 patents?

2 A. Actual application time I think it was two years on one
3 and possibly one to two on the other one. That's just the
4 application time, from the time you submit and you get patent
5 pending.

6 Q. Did you have to hire lawyers to get these patents?

7 A. Lawyers and engineers to actually do the drawings that
8 would be accepted by them.

9 Q. Has anybody in your family ever gotten a patent before?

10 A. No, sir.

11 Q. Mr. O'Hagan, are you proud of these two patents?

12 A. Yes, sir.

13 Q. How did you first hear about Gyro-Trac?

14 A. I think it was around 1995 my brother had been at a show
15 on clearing-type equipment or it might have been a forestry
16 show and he came back from there with a brochure on a
17 Gyro-Trac tractor.

18 Q. And what is it that you learned about the Gyro-Trac
19 tractor then?

20 A. At the time they had a mower-type cutter head on the
21 front so we were more interested in just the tractor, not
22 their cutter head. But we were very interested in looking at
23 it for another type of machine to put our cutter head on. I
24 got in touch with a man I believe at the time was in North or
25 South Carolina was supposed to be the dealer for Gyro-Trac at

1 that time. And I called him to see if he had any equipment
2 available. He had some used pieces but actually he was losing
3 his dealership so he gave me the number of somebody else to
4 talk to in Canada which I think was Daniel at the time.

5 Q. What is it that was interesting to ROWMEC about the
6 Gyro-Trac tractor that they were making?

7 A. That it was a purpose built tractor for the clearing
8 industry and that it was a low ground pressure which meant it
9 would go places that a lot of our rubber tire machines
10 wouldn't go and the horsepower. It was just a nice looking
11 tractor.

12 Q. If you would, explain to us the difference between what
13 you just referred to as a low pressure tractor versus a rubber
14 tire tractor.

15 A. This was a rubber track machine which had rubber tracks
16 that supported steel bolted going across. So, it wasn't quite
17 a bulldozer-type chassis. It was a light weight, low ground
18 pressure. I'm trying to think of something I could tell you
19 to compare it to but I really can't. It was light weight,
20 good for swampy areas and mountains. It was very safe, very
21 steady.

22 Q. Are you talking about like a track on a tank, for
23 example?

24 A. Sort of, yeah, but even lighter than that. It was rubber
25 with steel bolted across the three rubber strips that would

1 hold those together.

2 Q. And what is it that makes that low ground pressure?

3 A. It's the combination of the square inches of track on the
4 ground and the lightness of the machine itself.

5 Q. And would that allow a land clearing machine to get into
6 a place where rubber tire tractors might sink or bog down?

7 A. Sure. Especially in right of way work.

8 Q. Was that one of the big attractions to ROWMEC about the
9 Gyro-Trac machine?

10 A. Yes. Because one of the things that we ran into when we
11 started doing pipeline right of way out here is not only the
12 winters where you know if you are from here that it can rain
13 pretty continuous all the way through the winter but the
14 bottoms and the low areas that you go through on right of ways
15 because they cross country. So, you cross quite a few bottoms
16 and creeks and... We were having to do all of those by hand
17 for years. Even if you had a good machine that would do the
18 clearing, it wouldn't go through the wet stuff. So usually in
19 the winters, and even in some of our wet summers, we did a lot
20 of clearing of right of ways by hand instead of using our
21 equipment.

22 Q. And before you saw or became aware of the Gyro-Trac
23 machine, had you really seen anybody else out in the
24 marketplace that had a low-ground-pressure-type machine to
25 which your company could attach a cutter head?

1 A. No. Because what Gyro-Trac did to make theirs stand out
2 is before that you saw snow-type equipment or machines that
3 looked similar to theirs but they were all manual
4 transmissions in them so you couldn't really use them in a
5 clearing-type application.

6 Q. All right. And was your company excited, frankly, when
7 you saw Gyro-Trac machines and the potential applications it
8 had with your cutter head?

9 A. Very excited by several things. First, the machine
10 itself, the fact it hadn't been down here. I think there was
11 one dealer at the time and he wasn't staying. So, they hadn't
12 really been introduced down here at all. So, we could get in
13 on the ground floor.

14 Q. Okay. Before -- strike that.

15 When you first became aware of the Gyro-Trac
16 tractor and that type of track technology, which you call the
17 low ground pressure technology, were you aware of anybody else
18 anywhere in North America that was putting a drum-type cutter
19 head like yours on a track machine?

20 A. No.

21 Q. And to the best of your knowledge, Mr. O'Hagan, who was
22 the first person to do that in North America?

23 A. It was ROWMEC.

24 Q. What year was that?

25 A. Possibly '97, 1997.

1 Q. All right. In talking about your relationship with
2 Gyro-Trac, after you became aware of the fact that they had
3 this tractor that your company wanted to use, where did things
4 go next?

5 A. I contacted -- and I believe it was Daniel. I can't
6 remember for sure -- but he had moved to South Carolina -- had
7 just moved there at the time and had a tractor down there that
8 I could come look at it. So, I flew down there and took a
9 look at it.

10 Q. More or less when did you go meet with Daniel in South
11 Carolina?

12 A. I'm a little rusty on dates but I think it was around
13 1997.

14 Q. And what happened at that meeting?

15 A. I met Daniel. We went out and looked at the machine. I
16 drove it around a little bit. It was just a tractor without a
17 cutter head on it but I was pretty impressed.

18 Q. Very good. Did he even have any type of cutter head that
19 he was trying to sell at the time?

20 A. He had a little double-bladed-mower-type cutter head on
21 the front. A little heavier than a mower, it was a brush-type
22 but mower design.

23 Q. All right. And just so we're clear which Daniel you're
24 talking about, which Daniel did you meet with? Are you
25 talking about Daniel Gaudreault?

1 A. Yes, sir. I'm sorry.

2 Q. And are you talking about the owner of Gyro-Trac?

3 A. Yes.

4 Q. What happened after the meeting you had with Daniel in
5 South Carolina?

6 A. ROWMEC actually purchased, I think it was, three machines
7 from him.

8 Q. When ROWMEC purchased those machines, what was ROWMEC'S
9 business purpose or intention in purchasing those machines?

10 A. To put our cutter heads on the front and sell them.

11 Q. And you were going to sell them -- ROWMEC was going to
12 sell them to customers?

13 A. Yes.

14 Q. What machines did ROWMEC purchase from Gyro-Trac?

15 A. We bought three GT-18's. That was the only model he had
16 at the time.

17 Q. To your knowledge was Gyro-Trac or Daniel making any
18 other type of machine other than the GT-18 at the time?

19 A. They might have made a carrier-type tractor which was
20 called a Mesick, I think, which was basically the low ground
21 pressure machine but it was just for hauling cargo or
22 personnel, not a clearing-type machine.

23 Q. All right. And when was it -- over what time period did
24 ROWMEC buy those track machines, the first track machines from
25 Gyro-Trac?

1 A. It was in '97. It was within a couple of months we had
2 purchased all three. I can't give you exact dates.

3 Q. Just so we're clear, was there any kind of dealer
4 relationship with Gyro-Trac at the time?

5 A. No.

6 Q. Was this just an arm's length transaction? You're
7 interested in their tractor and you would like to go get their
8 equipment?

9 A. Yes, sir.

10 Q. Where did the business relationship go from there?

11 A. We put cutter heads on two of the tractors, sold one
12 immediately to a customer of ours. Between the first and the
13 third unit, we started having some pretty bad problems with
14 the tractor itself. We ended up purchasing that tractor back
15 before we could get the third one sold. So, we didn't have a
16 lot of good luck.

17 Q. All right. And what year was that?

18 A. Between '97 and '99. That's all I can remember.

19 Q. And even though you had maybe some specific problems with
20 those machines, was ROWMEC still fundamentally interested in
21 using track machines with drum cutter heads?

22 A. Yes. We definitely kept looking for a replacement.

23 Q. And what other companies were out there that ROWMEC
24 looked at potential suppliers for track machines?

25 A. There were none.

1 Q. None other than Gyro-Trac?

2 A. Gyro-Trac.

3 Q. Now, where did the business relationship go with
4 Gyro-Trac after that? Did Gyro-Trac ever purchase cutter
5 heads from ROWMEC, for example?

6 A. Yes, kind of all at the same time. We had purchased the
7 three tractors. I think it was right around then -- it was
8 2000 -- right around 2000, I guess, 2001 they had purchased
9 some cutter heads from us. So, the whole thing was from '97
10 to 2000, 2001. I'm just not good on the dates.

11 Q. And, Mr. O'Hagan, when you first started during business
12 with Gyro-Trac, did you express to Daniel a vision or your
13 ideas of how the marriage of that technology could be
14 beneficial to both companies?

15 A. Yes, definitely. We thought it would be a perfect fit
16 for both companies. At the same time, like I said, he bought
17 two to four cutter heads from us and took them and installed
18 them on tractors of his, too.

19 Q. What, if anything, did he express to you about how they
20 saw the business opportunity and what importance or role your
21 cutter heads had in their business?

22 A. What I got directly from Daniel and later on from Jon
23 Flournoy is that they weren't doing well with trying to sell
24 their tractors here with the mower-type cutter head. But when
25 they installed our cutter heads on there, that's when their

1 part of the company started to take off.

2 Q. What do you recall Daniel telling you about that, about
3 his experience of putting his tractors with your cutter heads?

4 A. Actually what he told me, he was almost bankrupt when he
5 bought the first cutter heads from me and that's when his
6 business really started taking off.

7 Q. How many cutter heads did you sell to Gyro-Trac?

8 A. Four maybe five.

9 Q. And more or less when was the last cutter head that you
10 ended up selling to Gyro-Trac?

11 A. It was all pretty close in that time period but it was
12 just the four or five and then he never purchased any more
13 from us.

14 Q. After you sold that last cutter head to Gyro-Trac, what
15 happened in your relationship with Gyro-Trac after that?

16 A. He started producing his own cutter heads.

17 Q. And when did that happen?

18 MR. KEENAN: Objection, Your Honor. I think we're
19 about to violate the limine.

20 MR. BANDAS: Can we approach, Your Honor?

21 (At side bar)

22 MR. KEENAN: The Court, as I understand it, Your
23 Honor, ruled that the only thing that was going to be
24 discussed with regard to the underlying litigation was that
25 there was a patent lawsuit filed, period, the end. And I

1 think where he's about to go is down memory lane with how they
2 got to the point where a patent lawsuit was filed.

3 MR. BANDAS: No. That's not all what I'm going to
4 do. I think it's fair to establish in very succinct manner
5 the fact there was a lawsuit, there was an allegation of a
6 patent dispute, and that there's a settlement. We're not
7 getting into the merits of it.

8 MR. KEENAN: No. No. What the Court ruled was is
9 that that very issue could not be gotten into. And, you know,
10 that's exactly where you are going now with it. The next
11 question you were going to ask him is: Did you consider that
12 a violation of the patent? And then we're going to be off to
13 the races.

14 MR. BANDAS: That's not the next question we were
15 going to ask. I was simply going to ask, Your Honor: What
16 happened next? He's going to say: They were making their
17 own. What did you do? We filed a lawsuit. What happened?
18 It was settled. That's where we get to where we are.

19 MR. KEENAN: Well, okay. If that's --

20 THE COURT: If that's what he's going to ask, that
21 sounds fine to me.

22 MR. KEENAN: I agree. I was not at all convinced
23 that's where we were headed.

24 THE COURT: How much longer do you have with him?

25 MR. BANDAS: Hours.

1 THE COURT: All right. I think it's a good time to
2 take our evening recess.

3 (Open court)

4 THE COURT: All right. Ladies and gentlemen, I
5 think we've kept you here long enough. We're going to take
6 our evening recess. We'll start tomorrow morning at 10:00
7 o'clock. I'd like you to be in the jury room no later than,
8 say, 9:45 or so. If you want to come earlier, it will be
9 open, but I'd like you here at least by 9:45.

10 Please remember the admonition that I gave to
11 you earlier about not discussing any aspect of this case with
12 anyone. You are not to make up your mind as to any fact or
13 issue until all of the evidence has been presented and the
14 case is finally submitted to you. So, with that admonition,
15 thank you very much for your attention and we'll see you in
16 the morning.

17 THE MARSHAL: All rise.

18 (Proceedings concluded for the day at 5:59 p.m.)

19 * * *

20
21 I certify that the foregoing is a correct transcript from the
22 record of proceedings in the above-entitled cause, to the best
23 of my ability.

24
25
Stephanie Kay Carlisle-Neisser CSR, RPR
Official Court Reporter

12/28/07
Date

1 THE COURT: The jury is ready. Let's go.

2 (Jury present)

3 THE COURT: All right. Mr. Bandas, are you ready to
4 proceed.

10:18:16AM 5 MR. BANDAS: We are ready to proceed with
6 Mr. O'Hagan, Your Honor.

7 THE COURT: Mr. O'Hagan, would you please come
8 forward and have a seat back in the witness chair and remember
9 that you are still under oath.

10 (JOHN PATRICK O'HAGAN, JR., Plaintiff's witness, previously
11 sworn.)

12 DIRECT EXAMINATION (Continued)

13 BY MR. BANDAS:

14 Q. Mr. O'Hagan, yesterday when we left we were -- just to
10:18:36AM 15 help us maybe remember where we were -- we were talking about
16 your patents and what happened when you found out that
17 Gyro-Trac was making their own drum cutter head and cutter
18 teeth. Do you remember that?

19 A. Yes, sir.

10:18:48AM 20 Q. What happened after you found that out?

21 A. We filed suit against Gyro-Trac Canada and Gyro-Trac
22 (USA).

23 Q. And was that a patent lawsuit?

24 A. Yes, sir.

10:18:56AM 25 Q. And when was that filed?

1 A. Sometime in '03.

2 Q. Is that when it was settled or is that when it was filed?

3 A. It was filed before that. It was settled in '03.

4 Q. And I don't want to get into what happened in that

10:19:13AM 5 lawsuit except to ask you did you sign or reach a settlement

6 agreement in that case?

7 A. Yes, sir, we did.

8 Q. All right.

9 MR. BANDAS: Mike, if would, would you please bring

10:19:24AM 10 up Exhibit No. 4.

11 BY MR. BANDAS:

12 Q. Could you please identify that document, Mr. O'Hagan?

13 A. That is the settlement agreement.

14 Q. And what is the effective date of that settlement

10:19:46AM 15 agreement? I think we can see it right up here.

16 A. September 12, 2003.

17 Q. I know you're not a lawyer, Mr. O'Hagan, but generally

18 speaking, did ROWMEC release its claims against Gyro-Trac,

19 Inc., in Canada and Gyro-Trac (USA) in South Carolina?

10:20:03AM 20 A. Yes, sir.

21 Q. And generally speaking, what is it that ROWMEC got in

22 this settlement?

23 A. We got some cash and we got a dealership agreement from

24 Gyro-Trac, Inc., and Gyro-Trac (USA).

10:20:18AM 25 Q. What was the cash for?

1 A. \$300,000 to kind of help us in the money that we had lost
2 because of the patent infringement.

3 Q. Was that also to help start the dealership?

4 A. Yes, sir.

10:20:30AM 5 Q. All right. And the other part of it was -- was that a
6 dealership?

7 A. Yes, sir. A dealership for Texas and the surrounding
8 states.

9 Q. All right. Did ROWMEC see settling that case for an
10:20:45AM 10 exclusive five-state dealership as valuable?

11 A. Yes, sir. That was what we were most excited about.

12 Q. Mr. O'Hagan, why it is it that you agreed to become a
13 dealer for two companies that you had just sued?

14 A. Well, we had hoped we could get past the original issues
10:21:03AM 15 and actually form sort of a partnership in selling this
16 equipment.

17 Q. Did you believe in the Gyro-Trac equipment at that time?

18 A. Yes. Yes.

19 Q. And do you think that the Gyro-Trac equipment had a
10:21:17AM 20 valuable place in the marketplace?

21 A. Yes. It had a huge potential.

22 Q. I know we're going to talk about some problems with the
23 machines. But as you're sitting here today, do you still
24 believe that the Gyro-Trac machine has value and merit in the
10:21:32AM 25 marketplace?

1 A. Yes.

2 Q. Do you wish you were still the dealer?

3 A. Yes.

4 Q. All right. What I want to do with you is go over some of
10:21:41AM 5 the basic terms of the contract, Mr. O'Hagan.

6 MR. BANDAS: If we can, Mike, let's zoom in on this
7 area up here.

8 BY MR. BANDAS:

9 Q. Okay. First of all, Mr. O'Hagan, who are the two
10:22:02AM 10 parties -- or who are the parties to this agreement?

11 A. Gyro-Trac, Inc., in Canada and Gyro-Trac (USA).

12 Q. All right.

13 MR. BANDAS: Mike, could you please highlight....

14 BY MR. BANDAS:

10:22:31AM 15 Q. Just so we're clear, "Gyro-Trac," when that term comes up
16 in this agreement, does it mean both Gyro-Trac, Inc., in
17 Canada and Gyro-Trac (USA) in South Carolina?

18 A. Yes.

19 Q. All right. If you would, tell us what was the exclusive
10:22:47AM 20 dealership that ROWMEC got under this agreement?

21 A. We would be the exclusive dealer for Texas and the
22 surrounding states where we would be the only dealer available
23 to buy Gyro-Trac products.

24 Q. All right. What states were you going to be -- or were
10:23:02AM 25 you exclusive dealers in?

1 A. Texas, Oklahoma, New Mexico, Arkansas, and Louisiana.

2 Q. All right. We've heard in opening that Gyro-Trac, Inc.,
3 doesn't think they supplied you under this agreement. Do you
4 agree with that?

10:23:17AM 5 A. No.

6 Q. How come?

7 A. Because we made the agreement with both companies. We
8 thought of them as one company.

9 Q. Was Gyro-Trac, Inc., in Canada a supplier to you under
10:23:30AM 10 your reading of this agreement?

11 A. Yes, sir.

12 MR. KEENAN: Objection, Your Honor. Calls for legal
13 interpretation.

14 THE COURT: Sustained.

15 BY MR. BANDAS:

16 Q. Was Gyro-Trac, Inc., one of the parties to this
17 agreement?

18 A. Yes, sir.

19 Q. Was Gyro-Trac (USA) one of the parties to this agreement?

10:23:47AM 20 A. Yes, sir.

21 Q. Were you looking at them -- how were you looking at them?

22 A. Basically as one entity.

23 Q. Were you looking at them as your supplier under this
24 agreement?

10:23:59AM 25 A. Yes.

1 Q. Now, since the settlement agreement was signed, has
2 Gyro-Trac, Inc., engaged in the manufacture, assembly, or
3 wholesale distribution of Gyro-Trac equipment covered under
4 the agreement?

10:24:15AM 5 A. Yes, sir.

6 MR. KEENAN: Objection, Your Honor. Calls for
7 speculation.

8 MR. BANDAS: He's going to testify factually to how
9 this agreement worked, Your Honor.

10:24:22AM 10 MR. KEENAN: That wasn't the question. The question
11 was: Has Gyro-Trac, Inc., supplied, manufactured, et cetera,
12 and it calls for speculation.

13 THE COURT: I agree it calls for speculation unless
14 you can prove he knows personally that they have done that.

10:24:35AM 15 So, sustained.

16 MR. BANDAS: Okay.

17 BY MR. BANDAS:

18 Q. Mr. O'Hagan, did you specifically bargain for Gyro-Trac,
19 Inc., in Canada being a supplier or distributing equipment to
10:24:59AM 20 you under this agreement?

21 MR. KEENAN: Objection, Your Honor. That runs into
22 the limine. The terms of the contract speak for themselves.
23 What he bargained for or not is irrelevant.

24 MR. BANDAS: Your Honor, what I thought we talked
10:25:08AM 25 about was we can talk about the factual circumstances of how

1 this contract was entered into.

2 THE COURT: I'm going to sustain the objection.

3 MR. BANDAS: Okay.

4 BY MR. BANDAS:

10:25:26AM 5 Q. Mr. O'Hagan, why was it important to have Gyro-Trac,
6 Inc., in Canada and Gyro-Trac (USA) in the settlement
7 agreement?

8 MR. KEENAN: Objection, Your Honor. Parole
9 evidence....

10:25:43AM 10 THE COURT: I'm going to let him answer that
11 question.

12 BY MR. BANDAS:

13 Q. Why was that important, Mr. O'Hagan?

14 A. Well, in the settlement it was brought to our attention
10:25:52AM 15 that if we had gone through and gotten a judgment against
16 Gyro-Trac South Carolina that they would close it down and
17 just take it back to Canada where we wouldn't be able to get
18 any of the benefit of the settlement agreement.

19 Q. Was it important for you for both of those companies to
10:26:08AM 20 be obligated under this agreement?

21 A. Yes. Gyro-Trac Canada was very important to us because
22 we had been told that they were backed by the Canadian
23 government. They were more substantial. Gyro-Trac (USA) had
24 just started in South Carolina.

10:26:22AM 25 Q. All right. Now, under this dealership agreement could

1 there be any other dealers in the five-state area?

2 A. No.

3 Q. Mr. O'Hagan, now I want to shift your attention to how is
4 it that ROWMEC was going to make money under this settlement
10:26:41AM 5 agreement?

6 A. We would buy equipment from Gyro-Trac at a
7 wholesale-less-10-percent-price and then sell it for a profit.

8 Q. All right.

9 MR. BANDAS: May I approach the Elmo, Your Honor?

10:26:53AM 10 THE COURT: Yes.

11 MR. BANDAS: Would it be okay, Your Honor, if I went
12 to the easel?

13 THE COURT: Absolutely.

14 BY MR. BANDAS:

10:28:10AM 15 Q. Can you see that?

16 A. Yes, sir.

17 Q. And just to cover so we have a clear distinction in this
18 case, how does ROWMEC make money under the settlement
19 agreement?

10:28:19AM 20 A. According to the contract we were to be sold equipment
21 and products from Gyro-Trac at the best wholesale price less
22 an additional 10 percent.

23 Q. Is that the dealership part of the agreement?

24 A. Yes, sir.

10:28:30AM 25 Q. And generally speaking, were there any other ways that

1 ROWMEC would make money under this agreement?

2 A. Service and -- service of the equipment after it was
3 done.

4 Q. What would be included under dealership?

10:28:46AM 5 A. Sales.

6 Q. Sales?

7 A. Sales.

8 Q. Okay.

9 A. Sales of consumable products after the machines were in
10:28:54AM 10 the field.

11 Q. Replacement parts?

12 A. Yes, sir.

13 Q. All right. What else? Did you say "service" a moment
14 ago?

10:29:11AM 15 A. Yes, sir. I thought it was up there. Service.

16 Q. All right. That's in the dealership category?

17 A. Yes.

18 Q. Is there another category of how ROWMEC would make money
19 under this settlement agreement?

10:29:24AM 20 A. Commissions on equipment that Gyro-Trac sold.

21 Q. Okay. Those would be on Gyro-Trac sales?

22 A. Yes, sir.

23 Q. Is that right?

24 A. Yes.

10:29:38AM 25 Q. And commissions, were they limited to particular sales,

1 meaning whether or not it was in your territory?

2 A. It was outside the territory, the rest of the United
3 States.

10:29:54AM

4 Q. And just so we're clear, is ROWMEC suing the Gyro-Trac
5 companies for taking away the dealership in this case?

6 A. Yes.

7 Q. Is ROWMEC suing Gyro-Trac for not paying commissions in
8 this case?

9 A. No.

10:30:03AM

10 Q. Okay. Very good.

11 Generally speaking, how does a heavy-equipment
12 dealership work?

13 A. Again, we buy product at a discounted wholesale price
14 less 10 percent and we sell it for a profit.

10:30:39AM

15 MR. BANDAS: Mike, please pull up Exhibit No. 4 and
16 focus in on paragraph 10, fourth page. Okay.

17 If we could, let's highlight this bottom
18 section, beginning right there.

19 BY MR. BANDAS:

10:31:48AM

20 Q. Mr. O'Hagan, what is that? What are we looking at on the
21 screen?

22 A. The terms and conditions of the contract.

23 Q. And what was the price that ROWMEC was supposed to get on
24 products sold by the Gyro-Trac companies?

10:32:02AM

25 A. Other than tractors, it was the lowest available

1 wholesale price less an additional 10 percent.

2 Q. All right. Now, it says there "all products other than
3 tractors." What is a tractor?

4 A. A tractor is just the tractor without any cutter head on
5 it.

10:32:20AM

6 MR. KEENAN: Objection, Your Honor. It's asking him
7 to construe the contract.

8 MR. BANDAS: May we approach on this, Your Honor?

9 THE COURT: All right.

10:33:50AM 10 (At side bar)

11 MR. KEENAN: The objection is he's interpreting the
12 contract. The Court has already ruled the contract is not
13 ambiguous. And with regard to this, I think it is offering
14 Parole Evidence for interpretation.

10:33:50AM 15 MR. MEYER: Judge, this is something that we
16 actually took up in the first day of the pretrial. I actually
17 think our interpretation is the same as Mr. Keenan's which is
18 a tractor is simply a mower, the vehicular part of the
19 machine. It excludes the cutter head. That's exactly what we
10:33:50AM 20 talked about in pretrial. So, I don't think they'll be an
21 objection.

22 But the word "tractor," even though I don't
23 think we have a disagreement on it, is not defined in the
24 agreement. He's in this business. I can't imagine that he
10:33:50AM 25 can't say what a tractor is. It's not defined in the

1 agreement. It's just common sense to explain what it is
2 about.

3 MR. BANDAS: It is part of the factual underpinning
4 of what this contract is about. You have a dealership to sale
10:33:50AM 5 cars....

6 THE COURT: I'm going to let him say what his
7 understanding is of what a tractor is.

8 (Open court)

9 BY MR. BANDAS:

10:33:56AM 10 Q. Mr. O'Hagan, here it says "all products other than
11 tractors offered by Gyro-Trac shall be available to ROWMEC at
12 Gyro-Trac's lowest available wholesale price less an
13 additional 10 percent."

14 What does that mean to you or to ROWMEC, "other
10:34:10AM 15 than tractors"?

16 A. That would be all products and machines sold by
17 Gyro-Trac, complete machines.

18 Q. How is a tractor different than a complete machine?

19 A. That part was actually put in there by Gyro-Trac to
10:34:23AM 20 protect them, to keep ROWMEC from being able to buy tractors
21 at a discounted price --

22 MR. KEENAN: Objection, Your Honor. It's
23 speculation as to what Gyro-Trac put in. He is interpreting
24 the contract again. Same objection.

10:34:37AM 25 MR. BANDAS: Your Honor, he's just simply explaining

1 what his understanding of the contract is.

2 THE COURT: Overruled.

3 BY MR. BANDAS:

4 Q. Mr. O'Hagan, please continue your answer.

10:34:46AM 5 A. It kept us from being to -- us, meaning ROWMEC -- from
6 being able to purchase a tractor by itself at a discounted
7 rate and then putting our own cutter head on it and therefore
8 having a better price in the market than Gyro-Trac would have.

9 Q. Does that mean simply that Gyro-Trac didn't want to sell
10:35:05AM 10 tractors by themselves at a discount where you could put your
11 own cutter head on it and under sell them?

12 A. Yes, sir.

13 Q. When we go here and we say "all other products" or "all
14 products other than tractors" what does "all products" mean to
10:35:22AM 15 you?

16 A. Any complete machines that Gyro-Trac manufacturers plus
17 the replacement parts and things that go along with them.

18 Q. Just so we're clear, what is a complete machine?

19 A. A tractor with a cutter head.

10:35:42AM 20 Q. Now, when you have a dealership contract, Mr. O'Hagan, is
21 it important for the suppliers, the Gyro-Trac companies in
22 this case, to have equipment for you to sell?

23 A. Yes, sir.

24 Q. And under this agreement does Gyro-Trac have to maintain
10:35:56AM 25 wholesale prices?

1 A. Yes.

2 MR. BANDAS: If we can, let's look at Paragraph 6,
3 please, Mike, on Page 3.

4 BY MR. BANDAS:

10:36:26AM 5 Q. What I want to do with you, Mr. O'Hagan, is go through
6 and talk about some of the different things that Gyro-Trac was
7 obligated to do under this agreement. One of the things that
8 we heard yesterday in opening was that Gyro-Trac didn't have
9 to supply a truck and trailer.

10:36:41AM 10 MR. BANDAS: If we could, Mike, let's please
11 highlight that part. Just right there, please.

12 BY MR. BANDAS:

13 Q. Okay. What was the purpose of having a truck and
14 trailer?

10:36:56AM 15 A. To supply us with a truck and trailer to do the
16 tow-and-show to pull the machines around for demos.

17 MR. BANDAS: And then let's go to this sentence
18 here, please, Mike.

19 BY MR. BANDAS:

10:37:25AM 20 Q. If you would, Mr. O'Hagan, please read that.

21 A. "The purpose of this provision is to ensure that ROWMEC
22 has at least one of each complete unit made by Gyro-Trac for
23 sale on consignment at all times."

24 Q. And what is a complete unit?

10:37:38AM 25 A. Tractor with a cutter head.

1 Q. All right. And what does consignment mean?

2 A. That we wouldn't be charged for it until it was sold.

3 Q. All right. And what does it mean to have one on

4 consignment at all times?

10:37:52AM 5 A. That we should have each of one of their models on our

6 lot at all times.

7 Q. Does that mean that every single time Gyro-Trac makes a

8 new model ROWMEC is supposed to get one?

9 A. Yes.

10:38:03AM 10 Q. Is that what a consignment machine is?

11 A. Yes.

12 Q. Now, we've heard some talk in this case about

13 demonstrator machines.

14 A. Yes, sir.

10:38:37AM 15 Q. What is a demonstrator machine?

16 A. It could be a couple of different things. It could be a

17 new machine that's taken out to demo one time for a customer

18 that's interested in buying it and he ultimately purchases

19 that machine or it can be a machine designated just to do

10:38:53AM 20 demos and not for sale.

21 Q. All right. How is a demonstrator machine different than

22 a consignment machine?

23 A. If it's the latter, then it's not designated for sale,

24 it's just there for demos.

10:39:07AM 25 Q. Going back to the exclusive territory, is Gyro-Trac

1 allowed -- or were they allowed to come into your territory
2 and sell machines without giving you credit?

3 A. No.

4 Q. And again, just to get sort of an overview of the major
10:39:23AM 5 provisions in this contract --

6 MR. BANDAS: Mike, if you would, please pull up
7 paragraph 9 on Page 4.

8 BY MR. BANDAS;

9 Q. All right. If you would, Mr. O'Hagan, please read that.

10:39:49AM 10 A. "Product support. Each party shall be responsible for
11 product it sales. However, Gyro-Trac shall be responsible for
12 standard manufacturer's warranty on products Gyro-Trac
13 manufactures and ROWMEC shall be responsible for standard
14 manufacturer's warranty on products ROWMEC manufactures,
10:40:10AM 15 regardless of which party sells the product."

16 Q. Under this agreement was ROWMEC ever responsible for
17 warranties on Gyro-Trac produced products?

18 A. No, sir.

19 Q. Why was that important to ROWMEC?

10:40:22AM 20 A. It was very important because of the three original units
21 that we had bought from Gyro-Trac we had a misunderstanding
22 about the warranty issues on those tractors. They felt that
23 we should be responsible for the warranty to the customer.

24 Q. And having this provision in this agreement, was that
10:40:39AM 25 your way of making sure this was clear for all time in your

1 relationship with the Gyro-Trac suppliers?

2 A. Yes, sir.

3 Q. All right. Now, after Gyro-Trac -- the Gyro-Trac
4 companies and ROWMEC signed the settlement agreement, did
10:41:04AM 5 ROWMEC and the Gyro-Trac companies start having problems?

6 A. Yes.

7 Q. And let's talk about warranty. During the course of your
8 dealership with Gyro-Trac, did you have to perform warranty
9 work on the Gyro-Trac tractors?

10:41:17AM 10 A. Yes, sir.

11 Q. What kind of warranty work did you end up doing?

12 A. What started out that we thought was a warranty issue
13 ended up being catastrophic failure of the undercarriage. So,
14 it actually turned into a recall.

10:41:34AM 15 Q. We just read paragraph 9 of the agreement. So, how is it
16 that ROWMEC even got in the position of doing any warranty
17 work on the Gyro-Trac equipment?

18 A. Because of the distance between Gyro-Trac Canada,
19 Gyro-Trac (USA) and our dealer area, they asked us to perform
10:41:50AM 20 warranty on customers' machines.

21 Q. Who asked you to do that?

22 A. Gyro-Trac Canada and Gyro-Trac (USA).

23 Q. All right. How come you didn't tell them, "Hey,
24 paragraph 9 says I don't have to do that"?

10:42:02AM 25 A. We knew it was in its infancy and we were trying to be

1 cooperative and help the product become popular.

2 Q. All right. Now let me show you what's been marked in
3 evidence as Plaintiff's Exhibit No. 25.

4 MR. BANDAS: Plaintiff's Exhibit No. 25.

10:42:55AM 5 BY MR. BANDAS:

6 Q. If you would, Mr. O'Hagan, could you identify that
7 document, please?

8 A. I can't really --

9 MR. BANDAS: Let's first zoom in on the date. Then
10:43:14AM 10 if you would, please zoom back out and let's zoom in on the
11 body of the letter.

12 BY MR. BANDAS:

13 Q. If you would, Mr. O'Hagan, tell us about this document.

14 A. That was a letter explaining that they had a warranty
10:43:29AM 15 claim form that they were going to have us fill out to do
16 warranty repairs.

17 Q. When ROWMEC and Gyro-Trac entered into the settlement
18 agreement, was there any warranty claim forms that existed at
19 this time?

10:43:42AM 20 A. No. Or procedure.

21 Q. Was this the first time they ever told you about a
22 warranty claim procedure?

23 A. Just the form, not a procedure.

24 Q. All right. And did you have conversations with Gyro-Trac
10:43:53AM 25 about this form and how to use it and whether you should use

1 it?

2 A. Yes.

3 Q. What conversations did you have with them?

10:44:05AM

4 A. Just that when we did a warranty repair on a customer's
5 tractor we needed to fill out that form and send it back to
6 them for consideration for credit.

7 Q. All right. Did ROWMEC ever agree to vary the terms of
8 the contract, paragraph 9, by telling Gyro-Trac that the only
9 way ROWMEC would be get paid is if it filled out this form?

10:44:26AM

10 Did you ever agree to that?

11 A. No, sir.

12 Q. Why not?

13 A. Because it wasn't part of the contract.

10:44:33AM

14 Q. Nevertheless, is this claim form something that ROWMEC
15 used?

16 A. Yes.

17 Q. During the entire dealership arrangement, from the
18 settlement agreement to the date of termination in 2006, how
19 many warranty claims did ROWMEC make?

10:44:47AM

20 A. How many claims did we make?

21 Q. Yes.

22 A. I know a close dollar amount. I'm not sure how many
23 claims that actually was.

10:45:03AM

24 Q. Dollar amount, what was the dollar amount of warranty
25 claims that ROWMEC made?

1 A. It was around \$130,000.

2 Q. All right. And during that time period with the recalls
3 and the problems, how many warranty claims did the Gyro-Trac
4 companies actually pay to ROWMEC during the term of the
10:45:18AM 5 dealership?

6 A. They never paid any. We got credit for two I think in
7 that time.

8 Q. And what was the dollar value of that credit?

9 A. One was around \$1400 and I think the other was around 6.

10:45:31AM 10 Q. Okay.

11 MR. BANDAS: May I approach the Elmo?

12 THE COURT: Yes.

13 BY MR. BANDAS:

14 Q. Mr. O'Hagan, I'm going to show you a document that's been
10:46:52AM 15 marked as part of Exhibit No. 26 in this case. Do you
16 recognize this document?

17 A. Yes, sir.

18 Q. All right. Do you have factual knowledge -- do you
19 personally -- of what this document is?

10:47:03AM 20 A. Yes, sir.

21 Q. What is this document?

22 A. This is 12 pallets of new and pull-off parts that we
23 pulled off of tractors we were doing warranty on that we
24 shipped back to Gyro-Trac.

10:47:17AM 25 Q. Okay. And does this document add up the different

1 amounts that gives you a total of how much the dollar value
2 was of all the parts, the warranty parts, that were shipped
3 back to ROWMEC -- to Gyro-Trac?

4 THE COURT: Mr. Keenan.

10:47:35AM 5 MR. KEENAN: Your Honor, this is the problem we
6 talked about before -- beforehand. This is the O'Hagan
7 binder. This is precisely the objection that we lodged and I
8 thought the Court's ruling was pretty clear.

9 MR. BANDAS: I did, too, Your Honor. And he's just
10:47:49AM 10 talking factually about the same things that are factually
11 also in Ms. O'Hagan binder. If he has any issues with it, he
12 can cross-examine the witness.

13 THE COURT: I think he said he had factual knowledge
14 of these items described on this exhibit. So, I'm going to
10:48:06AM 15 let him answer. Overruled.

16 BY MR. BANDAS:

17 Q. Again, Mr. O'Hagan, what does this document detail?

18 A. It's a packing slip of all the parts that had gathered up
19 from the recall and from the warranty issues, some being
10:48:23AM 20 brand-new parts that we never used for anything. When they
21 started going down, it happened so fast and so hard that
22 neither side really knew how to handle it. We knew it was
23 important to take care of the customer first. So, in a lot of
24 cases they were shipping us parts to replace the parts that
10:48:38AM 25 had failed. And by the time they got to get to us, they would

1 tell us not use them because they also were parts that were
2 defective. So, we started to get a pretty good pile of parts.

3 Q. It identifies here 12 different pallets of parts.

4 A. Yes, sir.

10:48:52AM 5 Q. What is a pallet?

6 A. A pallet generally is 48 by 48 inches square. It's just
7 what you put things on to ship by truck.

8 Q. Okay. And did you ship all of those parts back to
9 Gyro-Trac?

10:49:11AM 10 A. Yes, sir.

11 Q. How much money did Gyro-Trac charge you for all of these
12 parts?

13 A. It's around 130, \$140,000.

14 Q. All right. If we could, Mr. O'Hagan, again talking from
10:49:24AM 15 Exhibit No. 26, do you personally have factual knowledge of
16 some of the warranty claims that were being made by customers
17 on their tractors?

18 A. Yes, sir.

19 Q. And do you personally have factual knowledge of what
10:49:40AM 20 specific pieces were being replaced on tractors?

21 A. Yes.

22 Q. And do you personally have factual knowledge of how
23 Gyro-Trac was billing ROWMEC for some of those replacement
24 parts?

10:49:51AM 25 A. Yes, I do.

1 Q. And again from Exhibit 26 -- let me zoom in here. What
2 is a sprocket?

3 A. A sprocket, there's four on each machine, two on each
4 side, that's actually what drives the tractor.

10:50:17AM 5 Q. Okay. And what is a wheel assembly?

6 A. That is a support wheel that goes behind the shaft and
7 the sprockets that the track rides over.

8 Q. All right. And here's another one where we have an
9 example of being charged for a drive sprocket; is that right?

10:50:37AM 10 A. Yes.

11 Q. I'm going through these randomly. Here's another example
12 of Gyro-Trac billing for a drive axle. Do you see that?

13 A. Yes.

14 Q. Are these the types of parts that ROWMEC buys for resale
10:50:55AM 15 and profit?

16 A. Yes.

17 Q. Well, under the warranty claims, are these the type of
18 parts that ROWMEC buys and charges its customers for under a
19 warranty claim?

10:51:04AM 20 A. No.

21 Q. Now, of all of the items identified in the first document
22 I showed you totaling \$139,000, did ROWMEC resale any of those
23 items to its customers for a profit?

24 A. No.

10:51:17AM 25 Q. What did it do with the replace -- what did it do with

1 the parts for which the return parts were replacing?

2 A. Again, some of them were installed on customers' tractors
3 that had gone down. A majority of the parts were parts that
4 had been shipped to us and then found out during shipping, or
10:51:38AM 5 before we got to install them, that they were also defective
6 parts and we were asked not to put them on.

7 Q. Where does that 139,000-dollar number come from? Is that
8 just the invoices that Gyro-Trac sent ROWMEC?

9 A. Yes.

10:51:58AM 10 Q. So, that represents the price that Gyro-Trac actually
11 charged ROWMEC for warranty and recall parts?

12 A. Some, yes.

13 Q. Okay. And did ROWMEC return those parts to Gyro-Trac?

14 A. Yes.

10:52:10AM 15 Q. Did those amounts ever come off Gyro-Trac's bill?

16 A. ROWMEC's bill? No.

17 Q. I'm sorry. ROWMEC's bill. Or Gyro-Trac's bill to
18 ROWMEC?

19 A. No, never did.

10:52:23AM 20 Q. When were those parts returned?

21 A. It's on the paper right there. 10/17/05 when it was
22 shipped.

23 Q. Let me show you what has been marked as one of the
24 defendant's exhibits in this case. Do you recognize this

10:52:52AM 25 document?

1 A. Yes.

2 Q. Okay. What is this document?

3 A. It's an account statement.

4 Q. It's an account statement. And let's look at it. Have
10:53:07AM 5 you seen these before?

6 A. Yes.

7 Q. Do you have factual personal knowledge of how these work?

8 A. Yes.

9 Q. All right. Do you see there where it says "CR"?

10:53:16AM 10 A. Yes.

11 Q. What does that mean?

12 A. Credit.

13 Q. And then, for example, there we see a little minus sign
14 with 688.80?

10:53:28AM 15 A. Yes.

16 Q. What does that mean?

17 A. That would be a credit issued possibly for parts that had
18 been returned.

19 Q. And let's go through to -- you said you returned those
10:53:38AM 20 parts in October 2005?

21 A. Yes.

22 Q. All right. Do you see anywhere on Gyro-Trac's bill where
23 they gave you a credit for returning \$139,000 worth of parts?

24 A. No.

10:53:50AM 25 Q. All right.

1 MR. BANDAS: May I approach the easel next to the
2 witness?

3 THE COURT: You may.

4 BY MR. BANDAS:

10:54:09AM 5 Q. You understand that Gyro-Trac is contending in their
6 lawsuit against you in this case that you failed to pay
7 roughly \$694,000; is that correct?

8 A. Yes, sir.

9 Q. All right. And we've been through the exhibits on the
10:54:26AM 10 warranty return parts?

11 A. Yes, sir.

12 Q. And just to be clear, you returned \$139,000 worth of
13 parts?

14 A. Yes.

10:54:34AM 15 Q. They never took it off your bill?

16 A. No.

17 Q. Do you think it should have come off your bill?

18 A. Yes, sir.

19 Q. Would it be okay if we put that as one example in this
10:54:45AM 20 case of where the bill was incorrect that Gyro-Trac sent you?

21 A. Yes.

22 Q. Okay. Remember yesterday we were talking about -- or
23 Mr. Flournoy was testifying about the meeting that he had with
24 you in around July of 2005?

10:55:27AM 25 A. Yes, sir.

1 Q. Is that correct?

2 A. Yes.

3 Q. And you heard him testify about some conversation about a
4 repayment schedule?

10:55:32AM 5 A. Yes.

6 Q. All right. And I believe he testified that you paid
7 \$100,000 at that meeting?

8 A. Yes.

9 Q. All right. Did you in fact pay \$100,000?

10:55:45AM 10 A. Yes, sir.

11 Q. And again I'm going to show you what's been marked as
12 part of Exhibit No. 26. If you would, please identify what
13 that document is.

14 A. That is a return check, a canceled check for \$100,000.

10:56:02AM 15 Q. All right. Did Gyro-Trac cash that check?

16 A. Yes.

17 Q. Did your funds clear to go pay the \$100,000?

18 A. Yes.

19 Q. All right. When you got Gyro-Trac's bill and we look at
10:56:17AM 20 the time period for July of 2005, can you see anywhere on
21 there where they give you credit for the \$100,000 that you
22 paid them at the meeting?

23 A. No, never came off the statement.

24 MR. BANDAS: May I approach the easel, Your Honor?

10:56:34AM 25 THE COURT: Yes.

1 BY MR. BANDAS:

2 Q. Mr. O'Hagan, do you believe that \$100,000 should have
3 been credited to your account when you paid them \$100,000?

4 A. Yes, sir.

10:56:47AM 5 Q. So, we put up here another example of how their bill is
6 wrong?

7 A. Yes.

8 Q. And my math isn't so good generally, but if we add that
9 up, are we now under the 500,000-dollar credit line that they
10:57:10AM 10 talked about?

11 A. Yes, sir.

12 Q. I want to talk to you about another example with you if I
13 can. Are you aware that Gyro-Trac sold a GT-25 to Kris
14 Knackstead in January of 2006?

10:57:30AM 15 A. Yes.

16 Q. And again let me show you a document that's taken by
17 Mr. -- from Mr. Wayman's report.

18 MR. BANDAS: It's already in evidence, Your Honor.
19 He's the forensic CPA in the case.

20 BY MR. BANDAS:

21 Q. Do you see there where a machine was sold in January 2006
22 for \$283,000 to Kris Knackstead at Eco-Solutions?

23 A. Yes, sir.

24 Q. January of 2006 was ROWMEC still in its dealership with
10:58:07AM 25 Gyro-Trac?

1 A. Yes.

2 Q. When Gyro-Trac sold this machine, did it tell ROWMEC
3 anything about it?

4 A. No.

10:58:14AM 5 Q. All right. Did Gyro-Trac ever credit ROWMEC for having
6 this sale in ROWMEC's territory?

7 A. No, they did not.

8 Q. What was the MSRP of that machine if ROWMEC would have
9 sold it?

10:58:31AM 10 A. 269, 270,000.

11 Q. What was ROWMEC's cost at that time at least insofar as
12 what Gyro-Trac had said?

13 A. Depending on which sheet you used, it was 192, around
14 192.

10:58:49AM 15 Q. So, roughly speaking, what would have been ROWMEC's
16 profit on that sale if Gyro-Trac had told ROWMEC about the
17 sale and credited ROWMEC for the sale?

18 A. It would have been around 90,000, I think.

19 Q. Going back to the bill and looking at the dates for
10:59:08AM 20 January of 2006 --

21 MR. BANDAS: It's not on these.

22 BY MR. BANDAS:

23 Q. But, Mr. O'Hagan, do you have factual knowledge as to
24 whether or not Gyro-Trac ever properly credited ROWMEC's
10:59:27AM 25 90,000-dollar portion of that sale?

1 A. No, they didn't.

2 Q. Do you believe that should have come off the bill?

3 A. Yes, sir.

4 MR. BANDAS: May I approach the easel, Your Honor?

10:59:37AM 5 BY MR. BANDAS:

6 Q. And should we add that as another example of their bill
7 being incorrect?

8 A. Yes.

9 Q. Now, in addition, Mr. O'Hagan, are you generally aware of
11:00:22AM 10 other miscellaneous mistakes that Gyro-Trac made in their
11 bill?

12 A. Yes.

13 Q. What are those other mistakes of which you have personal,
14 factual knowledge?

11:00:32AM 15 MR. KEENAN: This is the O'Hagan binder again.

16 THE COURT: He says he has personal knowledge. I'm
17 going to let him testify. Overruled.

18 A. There were overcharges, duplicate charges, charges for
19 products that we never received, even products that were
11:00:49AM 20 sometimes shipped direct to our customers that they paid for,
21 we got charged for, too.

22 BY MR. BANDAS:

23 Q. Can you give me some more examples of that?

24 A. It's probably right on the statement there. But I know
11:01:02AM 25 of one for sure where Wright Tree Service paid for product

1 with a credit card and it showed up on our bill.

2 Q. All right. Do you remember the amount of that charge?

3 A. No, I sure don't.

11:01:16AM

4 Q. Was there several examples like that during the life of
5 this dealership?

6 A. Yes.

11:01:33AM

7 Q. All right. And have you in your company made an effort
8 to try to calculate what are those general -- or what is the
9 total amount of those general overcharges and just flat-out
10 mistakes on the bill?

11 A. Yes.

12 Q. All right. And generally speaking -- and I know you
13 didn't do the math yourself -- but you have factual knowledge
14 of who those totals are, correct?

11:01:42AM

15 A. Right now I think it's around 70,000. Between 70 and
16 80,000.

17 MR. BANDAS: May I approach the easel, Your Honor?

18 THE COURT: Yes.

19 BY MR. BANDAS:

11:01:50AM

20 Q. Okay. These general mistakes, do you believe, the double
21 billings and the COD's and charging you for parts that were
22 charged to your customers also, do you think that kind of
23 thing ought to come off the bill?

24 A. Yes.

11:02:07AM

25 Q. What did you say the number was?

1 A. 70 plus, 75, maybe.

2 Q. What if we just put 70; is that okay?

3 A. Sure.

4 Q. Do you believe that \$70,000 should have come off your
11:02:17AM 5 bill?

6 A. Yes.

7 Q. All right. Did that ever happen?

8 A. No.

9 Q. And I know we're going to talk about other problems with
11:02:25AM 10 the bill. But just right now are we pretty clear that this is
11 well under \$500,000?

12 A. Yes.

13 Q. Now, going back to the agreement....

14 MR. BANDAS: Mike, please pull up paragraph 6 on
11:02:50AM 15 Page 3, Exhibit No. 4.

16 BY MR. BANDAS:

17 Q. Can you see there where it says "Gyro-Trac will supply"?

18 A. Yes.

19 Q. If you would, just read the first few lines of this
11:03:27AM 20 paragraph, please, just so we have our bearings.

21 A. Starting with "Gyro-Trac"?

22 Q. Yes.

23 A. "Gyro-Trac will supply trucks, marketing materials, and
24 promotional materials comprising one truck, one trailer, and
11:03:41AM 25 printed marketing material generally available."

1 Q. Keep reading.

2 A. "In addition, Gyro-Trac agrees to sell to ROWMEC at least
3 one GT-18 tractor with a Gyro-Trac cutter head complete unit
4 on consignment. When available, Gyro-Trac also agrees to sell
11:03:57AM 5 ROWMEC one GT-10 tractor with a Gyro-Trac cutter head on
6 consignment with appropriate security to protect Gyro-Trac's
7 interest in the tractor."

8 Q. All right. And then we've already read this particular
9 sentence, right?

11:04:11AM 10 A. Yes.

11 Q. Very good. Now, under this agreement does -- do the
12 Gyro-Trac companies have an obligation to furnish you
13 consignment machines?

14 A. Yes, sir.

11:04:24AM 15 Q. When you signed this agreement, did anybody at Gyro-Trac
16 tell you that they would not have equipment available for you?

17 A. No, they did not.

18 Q. When you signed this agreement was it in fact your belief
19 that Gyro-Trac -- the Gyro-Trac suppliers would have equipment
11:04:43AM 20 that you could actually sell?

21 A. Yes.

22 Q. Was this an important part of your dealership?

23 A. Very important.

24 Q. Now, during the course of this dealership, did

11:04:55AM 25 Gyro-Trac -- strike that -- did ROWMEC have a hard time

1 getting consignment machines from Gyro-Trac?

2 A. We never did.

3 Q. Okay. Now, when the dealership agreement was signed,
4 what specific machines was Gyro-Trac making at the time?

11:05:11AM 5 A. At that particular time it was the GT-10 and the GT-18.

6 Q. Let's talk about the GT-18. Did you ever get a GT-18 on
7 consignment?

8 A. No.

9 Q. All right. What did you get in terms of a GT-18?

11:05:25AM 10 A. We got a used GT-18, what they called a demo machine.

11 Q. When did you get that?

12 A. September of '03 I believe or right after.

13 Q. Within a couple of months after the --

14 A. Yeah. Pretty close to the signing of the contract.

11:05:41AM 15 Q. Now, when you got that GT-18 tractor, did you have any
16 concerns about the machine when you got it?

17 A. Yes. Initially when we got it, Mr. Flournoy asked me to
18 look it over and make sure it had been checked over before it
19 left there. There were quite a few things that hadn't been

11:05:59AM 20 addressed.

21 Q. What were some of the things that hadn't been addressed?

22 A. Bolts missing, the tracks, the undercarriage were not in
23 great shape.

24 Q. What did you do with that machine?

11:06:07AM 25 A. He asked us to go try it, to go do a demo with it and see

1 how we liked what they'd done, the modifications that we
2 hadn't seen before.

3 Q. In other words, this was supposed to be a new generation
4 of the GT-18's that you had bought before?

11:06:21AM 5 A. Yes, sir.

6 Q. So, your understanding was this was the new and improved
7 GT-18?

8 A. Yes.

9 Q. Did you go out and do those demos?

11:06:29AM 10 A. Yes.

11 Q. When did you do your first demo?

12 A. It would have been very, very close to right after we got
13 the machine.

14 Q. And what happened at that demo?

11:06:37AM 15 A. A wheel fell off.

16 Q. By the way, when you go do a demo, is that what they call
17 a tow-and-show?

18 A. Yes.

19 Q. And what do you mean the wheel fell off?

11:06:47AM 20 A. One of the idler wheels that support the track fell off.

21 Q. Was your prospective customer watching at the time?

22 A. Yes.

23 Q. What did he think?

24 A. He was not real impressed.

11:06:58AM 25 Q. Did you call Mr. Flournoy and tell them that the wheel

1 had fallen off the GT-18?

2 A. Yes.

3 Q. What was his response?

4 A. He told us to hold off on pushing the GT-18 that they had
11:07:10AM 5 a new model coming out that had addressed all those issues,
6 the track issues, the wheel issues, the fit and finish issues
7 that they had in the past. He said just be patient, hold on,
8 the new tractor was coming.

9 Q. So, just to be really clear, what did Mr. Flournoy tell

11:07:25AM 10 you with respect to whether or not ROWMEC ought to even go try
11 to sell the GT-18?

12 A. They told us not to push that one, that they were going
13 to the send us an upgrade package also for the demo tractor
14 that would turn it into a demo GT-25 although it wouldn't
11:07:44AM 15 truly be one.

16 Q. But what were his instructions to ROWMEC about whether or
17 not to even try to sell a GT-18 in the future?

18 A. He said to wait, wait for the 25's.

19 Q. Okay. So, is that machine one that ROWMEC kept as a
11:07:59AM 20 demonstrator?

21 A. Yes.

22 Q. Did Gyro-Trac tell ROWMEC it was okay to keep it as a
23 demonstrator?

24 A. Yes.

11:08:06AM 25 Q. Did that GT-18 ever go out on demonstrations again?

1 A. Yes. After we went over it ourselves and upgraded it and
2 put the GT-25 upgrade stuff on it.

3 Q. And what was the GT-25 upgrade stuff?

11:08:23AM

4 A. At first it was just a different rotator to go on the
5 cutter head housing.

6 Q. Was it anything after that?

11:08:39AM

7 A. Well, we had asked for new tracks and stuff for it
8 because they weren't in that great a shape. They said take it
9 the way it is was for now. And on the next demo that we did,
10 the tracks failed. Then they sent us new tracks.

11 Q. And was your prospective customer watching at the time?

12 A. Yes.

13 Q. What did they think?

11:08:52AM

14 A. They had been talking about three sales if the tractor
15 did what we said it would do. Of course when the tracks
16 failed, they said they had seen enough.

17 Q. Three sales of what? Which machine?

18 A. GT-25's.

19 Q. All right. And who was that customer?

11:09:04AM

20 A. I don't have the name with me. I can get it. But I
21 don't remember it right now.

22 Q. Did anything ever happen again after that with that
23 particular customer?

24 A. I think they purchased some competitors' machines.

11:09:18AM

25 Q. Just so we're clear, during the entire duration of the

1 dealership between Gyro-Trac and ROWMEC, did ROWMEC ever get a
2 consignment GT-18?

3 A. No.

4 Q. All right. Let's talk about the GT-10 machine. Did

11:09:37AM 5 ROWMEC ever ask Gyro-Trac for a consignment GT-10 as required
6 by the contract?

7 A. Yes.

8 Q. Did they ever send you one?

9 A. No.

11:09:45AM 10 Q. Did you ever get any used GT-10's?

11 A. Yes.

12 Q. All right. Do you remember when you got the first one?

13 A. March possibly.

14 Q. Of 2004?

11:09:58AM 15 A. Yes.

16 Q. And what did you do with that machine?

17 A. We demonstrated it.

18 Q. And who did you demonstrate it for?

19 A. To a man named Mr. Koontz. Allied Development I believe
11:10:10AM 20 was the name of his company.

21 Q. Did he like the demonstration?

22 A. Yes.

23 Q. Did he place an order for a GT-10?

24 A. Yes.

11:10:16AM 25 Q. Did you take a deposit?

1 A. Yes.

2 Q. And more or less when did you take that deposit?

3 A. Not long after March, right in that time frame.

4 Q. All right. Did you put that order in with Gyro-Trac for
11:10:31AM 5 the GT-10?

6 A. Yes.

7 Q. Did they ever send the GT-10?

8 A. No.

9 Q. Ultimately what happened with the sale to Mr. Koontz?

11:10:41AM 10 A. After about six months he asked for his money back.

11 Q. All right. And when was it that Gyro-Trac finally let
12 ROWMEC know that they couldn't deliver or wouldn't deliver a
13 GT-10?

14 A. It was December of that year.

11:10:55AM 15 Q. All right. And generally speaking, Mr. O'Hagan, does it
16 affect your company's reputation to take a deposit on a
17 machine and sell it and not be able to deliver?

18 A. Yes, definitely.

19 Q. All right. Now, the used GT-10 that ROWMEC got, what
11:11:15AM 20 happened to that machine?

21 A. We demoed it to a couple more people and we sold it.

22 Q. All right. And did ROWMEC then look for at least another
23 used GT-10 machine?

24 A. We asked for anything they had available. We had
11:11:28AM 25 customers calling us about equipment. We had started

1 advertising. So, we were looking pretty bad. We didn't have
2 anything to sell.

3 Q. Okay. And when did you get the second used GT-10?

4 A. A little while after the March.

11:11:45AM 5 Q. All right. And what happened to that machine?

6 A. We demonstrated it and sold it.

7 Q. And who did you sell it to?

8 A. Kris Knackstead.

9 Q. All right. Now, after that what efforts did ROWMEC make
11:11:57AM 10 to continue to try to sell GT-10's?

11 A. After that we didn't have any more to sell. So, we
12 didn't try to sell any more.

13 Q. Was it clear to ROWMEC that whether you placed orders or
14 not for the GT-10, Gyro-Trac just wasn't going to deliver
11:12:17AM 15 them?

16 A. Right. Finally by December they had told us that they
17 weren't going to produce those any more.

18 Q. Were you getting calls for the GT-10's?

19 A. Yes.

11:12:25AM 20 Q. Were you getting calls for the GT-18's?

21 A. Yes.

22 Q. Did you have any machines at all on consignment that you
23 could sell them?

24 A. No.

11:12:31AM 25 Q. Did you have any machines that Gyro-Trac could even send

1 you if you ordered them?

2 A. No.

3 Q. Now let's talk about the GT-13. Did ROWMEC ever get a
4 GT-13 from Gyro-Trac?

11:12:45AM 5 A. Yes.

6 Q. All right. When did ROWMEC get that machine?

7 A. It would have been right about the time that Mr. Koontz
8 decided not to purchase his 10.

9 Q. Before I think you said December 2004?

11:13:00AM 10 A. Yes.

11 Q. Okay. So, this would have been shortly after that?

12 A. Yes.

13 Q. All right. And was that a new machine?

14 A. Yes.

11:13:08AM 15 Q. And tell me about that machine when you got it. What
16 happened?

17 A. Well, we didn't even know about the 13 that it was a new
18 production model that they were coming out with. When they
19 finally told us that they couldn't send us the GT-10, they
11:13:24AM 20 offered to send the 13 out there in its place.

21 So, they sent it out. And even though
22 Mr. Koontz had asked for his money back, we took it out there
23 to let him look at it to show him that we did finally get a
24 tractor hoping that he would possibly change his mind and
11:13:40AM 25 purchase the GT-13.

1 Q. Did he ultimately change his mind and purchase it?

2 A. No.

3 Q. All right. And did you have a demonstration with that
4 GT-13 for Mr. Koontz?

11:13:52AM 5 A. Yes.

6 Q. How did that demonstration go?

7 A. We had some track problems with it.

8 Q. What track problems did you have with the GT-13?

9 A. It tore the sprockets off the back.

11:14:03AM 10 Q. Was Mr. Koontz impressed with that?

11 A. No.

12 Q. Did you call anyone at Gyro-Trac to tell them you had
13 sprocket problems with the GT-13?

14 A. Yes, Mr. Flourney.

11:14:16AM 15 Q. What did he tell you to do?

16 A. He told us that basically that was one of the first
17 production units coming off the line. And if they knew they
18 had a problem -- they were going to send us the parts to
19 repair that one and to now keep that as a demonstrator
11:14:30AM 20 machine.

21 Q. So, ultimately did you ever get a consignment GT-13?

22 A. No.

23 Q. Now -- but nevertheless you then had a demonstrator; is
24 that correct?

11:14:40AM 25 A. Yes.

1 Q. And having that demonstrator, was that even available for
2 sale if you had had a customer come in wanting to buy a GT-13?

3 A. No.

4 Q. Did you sell any GT-13's after that?

11:14:53AM 5 A. Yes.

6 Q. Who did you sell it to?

7 A. We sold one to Asplundh Tree.

8 Q. And more or less, when was that sale?

9 A. It would have been after the December.

11:15:06AM 10 Q. All right. Did Asplundh's machine have problems?

11 A. Yes.

12 Q. And what problems did that machine have?

13 A. In the beginning it had some electrical problems, some
14 fit and finish problems, but the biggest problems were the

11:15:18AM 15 drive sprockets on the track system.

16 Q. Did you tell Gyro-Trac about these problems?

17 A. Yes.

18 Q. And how did they tell you to deal with it?

19 A. They shipped us more sprockets and said they weren't

11:15:29AM 20 quite sure what was causing the problem yet but they shipped
21 us new sprockets to put on there to keep the customer going.

22 Q. Did they tell you whether to step up your efforts to sell
23 the GT-13?

24 A. Yes. They said that they would have the problem taken
11:15:41AM 25 care of shortly.

1 Q. And did Gyro-Trac make any sales of GT-13's in your
2 territory?

3 A. Yes.

4 Q. And who did they sell it to?

11:15:51AM 5 A. To Stanley Tew.

6 Q. And did they ever tell you before that -- before they
7 were talking to Mr. Tew that they were in your territory?

8 A. No.

9 Q. How did you find out about it?

11:16:04AM 10 A. After they made the sale, they called us to see if we
11 would take delivery of the machine, do the service on it, and
12 deliver it to the customer.

13 Q. What was ROWMEC's response?

14 A. Yes.

11:16:13AM 15 Q. And did ROWMEC in fact do that?

16 A. Yes.

17 Q. Now, did ROWMEC have any input on the sales price of that
18 machine?

19 A. No. The deal was already done before we knew about it.

11:16:23AM 20 Q. Did ROWMEC have any input at all on any of the terms?

21 A. No.

22 Q. What company did?

23 A. Gyro-Trac (USA) and Gyro-Trac Canada.

24 Q. All right. Now, ultimately though, like we talked about
11:16:36AM 25 earlier on the GT-25 machine that was sold in January, for

1 this GT-13, did Gyro-Trac give you credit on your bill for
2 this particular sale?

3 A. Yes.

11:16:51AM

4 Q. And when we say credit, does that mean your profit
5 margin?

6 A. Yeah.

7 Q. Okay. And did they do that because it was in your
8 territory?

9 A. Yes, sir.

11:16:59AM

10 Q. Okay. But they didn't do that with the GT-25 that we
11 talked about earlier in January 2006; is that right?

12 A. No.

13 Q. Okay. Now I want to talk to you about the GT-25's --

11:17:14AM

14 THE COURT: Mr. Bandas, this might be a good chance
15 for us to take a mid-morning break before you move into the
16 next topic.

17 Ladies and gentlemen, we have a couple of
18 matters to take up with the lawyers while you're out. Let's
19 take a 30-minute break and be back here at a quarter till,
20 please.

11:17:27AM

21 (Jury out)

22 THE COURT: Let's take about ten minutes and talk
23 about the issue that we were dealing with this morning, the
24 supplier issue.

11:18:06AM

25 MS. WEBB: Yes, Your Honor.

1 MS. SHACKELFORD: Because Gyro-Trac has admitted in
2 its pleadings and in the pretrial order that the agreement
3 created a dealership on the part of ROWMEC, we believe that
4 that brings the contract into Chapter 19 because of their
11:18:34AM 5 judicial admissions and we simply want to preclude them now
6 after they have judicially admitted this from bringing in
7 evidence contrary to their judicial admissions. Those
8 admissions are binding and contrary evidence should not be
9 accepted on that issue.

11:18:50AM 10 And the Fifth Circuit has numbers of cases --
11 I'm sure you're familiar with most of them -- that do say that
12 judicial admissions are binding and that you cannot create a
13 fact issue by controverting your judicial admissions.

14 Now, we could waive that by failing to mention
11:19:09AM 15 when they bring in contrary evidence and that's what we're
16 trying to avoid.

17 THE COURT: All right. Ms. Webb.

18 MS. WEBB: With respect to the pretrial order, that
19 might be more appropriately addressed by Mr. LeBlanc.

11:19:18AM 20 MR. LeBLANC: Your Honor, that goes back to what
21 Mr. Keenan was saying earlier. Yes, they're parties to the
22 contract. Yes, that is the contract that established the
23 dealership arrangement. Absent this contract, there wouldn't
24 have been any obligation to sell to them at dealer prices,
11:19:33AM 25 whatever those might have been. But that doesn't -- I mean,

1 that doesn't apply -- I mean, that's a separate inquiry for
2 the Court. And if the evidence shows that there was never a
3 direct transaction about equipment between Gyro-Trac, Inc.,
4 and ROWMEC, then that's certainly relevant to the Court's
11:19:55AM 5 determination whether it's a supplier. I mean, supplier in
6 the statute has a very specific --

7 THE COURT: Supplier is defined in the statute.

8 MR. LeBLANC: Yes, Your Honor.

9 THE COURT: "Supplier means a person engaged in the
11:20:07AM 10 manufacture, assembly, or wholesale distribution of
11 equipment...." Supplier means a person engaged in the
12 wholesale, distribution of equipment.

13 Now, under this contract haven't both Gyro-Trac
14 companies agreed to supply wholesale equipment to ROWMEC?

11:20:34AM 15 MR. LeBLANC: Well, Your Honor, the contract
16 language notwithstanding the evidence is still that Gyro-Trac,
17 Inc., didn't actually supply any equipment and has never
18 supplied equipment inside the United States. I think that's
19 relevant to the inquiry. And there's an issue of --

11:20:54AM 20 THE COURT: Everybody is standing up now.

21 MR. KEENAN: May I speak to it just real quickly,
22 Your Honor?

23 THE COURT: Yes.

24 MR. KEENAN: The fact of the matter is, there is no
11:21:05AM 25 judicial admission where we say we are bound by this statute.

1 Either the statute applies or not. That's a question of law
2 for the Court. But what I would respectfully suggest is, is
3 even absent this contract, the Court would have to make an
4 inquiry whether or not the parties meet the definition of a
11:21:21AM 5 supplier or a dealer under that statute. And I don't think
6 you can ignore -- with all due respect to their argument --
7 ignore what the facts are in determining whether or not we
8 meet the definition for that --

9 THE COURT: When you sign an agreement that says you
11:21:37AM 10 are going to supply wholesale equipment to ROWMEC, doesn't
11 that bring you within the statutory definition?

12 MR. KEENAN: If we didn't supply it, we may have
13 breached the contract, but if we didn't supply anything, we
14 don't meet the definition under the statute. It's that
11:21:52AM 15 simple, I think.

16 MR. BANDAS: May I respond, Your Honor?

17 THE COURT: Sure.

18 MR. BANDAS: I think what we're hearing is if you
19 ignore the fact that we signed a contract committing to be a
11:21:59AM 20 supplier that fits the statutory definition and you just
21 ignore those facts, then we ought to have a fact issue on
22 whether or not they actually sent any. That doesn't really
23 seem very logical, Your Honor. I think that when you sign a
24 contract and you write your name down and you don't
11:22:15AM 25 differentiate your obligations between USA and Inc. and

1 they're both on the hook, if they want to move product through
2 one entity or the other, that's their own internal
3 convenience. We don't really care as long as we get our
4 product. We signed a contract with two companies that
11:22:29AM 5 obligated themselves identically in the identical way to do
6 it. And I don't think they can say, "Let's erase the
7 contract. Let's pretend like it never happened. Let's go
8 back in time and we will just get out of this contract by
9 moving everything through USA and playing games." I don't
11:22:46AM 10 think they can do that, Judge.

11 MR. KEENAN: They are two separate causes of action,
12 Your Honor. We absolutely are bound jointly and severally on
13 the breach of contract claim. If the jury finds a breach of
14 contract, I agree. But with regard to the statute, you cannot
11:23:00AM 15 overlay that contractual obligation and say that that meets
16 the definition. You've got to do a factual inquiry and see
17 have we performed the acts that the statute requires. If we
18 have, then they got us. If we haven't, then they don't.

19 MS. WEBB: I think it's also critical that whether
11:23:19AM 20 Gyro-Trac, Inc., may in fact supply somebody else -- on the
21 facts of this case, they didn't. But you can't go out and say
22 Caterpillar is a dealer with respect to ROWMEC. Because
23 regardless of the contract, what did they do? And in this
24 case Gyro-Trac, Inc., didn't do anything with respect to the
11:23:38AM 25 statute --

1 MR. BANDAS: I think I have an answer, Judge. If I
2 understand their argument correctly, let's assume for a second
3 that neither company supplied anything at all under this
4 contract, would their defense then be, "Well, USA didn't
11:23:52AM 5 supply it. We never moved a tractor. And Canada never
6 supplied it. So neither company can possibly fit the
7 statutory definition of Chapter 19."

8 MR. KEENAN: No --

9 MR. BANDAS: If -- I know everybody wants to say
11:24:06AM 10 something. I want to get my thought out.

11 The point is, Your Honor, we have a contract
12 that says in black and white, "These are who the suppliers
13 are. This is what they're obligated to do." Now, I think if
14 the Court looks at that, I don't think there's any argument
11:24:22AM 15 that that fits within the definition of Chapter 19. I think
16 what you're hearing the defense say is, "Let's just ignore the
17 contract and let's look at invoices and -- where things were
18 actually shipped from." I would just suggest, Your Honor,
19 that what they did after a contract doesn't define who they
11:24:41AM 20 are under the contract.

21 MR. KEENAN: Your Honor, I think Mr. Bandas may have
22 just made the point for us. If we do not perform under the
23 contract, we have breached the contract. But even if there
24 wasn't a contract, we would only be bound by this statute --
11:24:58AM 25 let me back up. If we hadn't performed at all under the

1 contract and never sold anything, never put ourselves in the
2 situation where we were favoring one dealer over another, et
3 cetera, then the statute would not apply. We would have
4 clearly breached the contract but we would have not have
11:25:12AM 5 engaged in conduct that meets the definitions under the
6 statute.

7 So, yes, in answer to his question, if neither
8 one of us had performed under the contract, we would have
9 breached the contract, but that statute would absolutely not
11:25:24AM 10 apply.

11 THE COURT: To either one?

12 MR. KEENAN: Either one. Because if you take a look
13 at that statute, what you're talking about is specific
14 violations that occurred during the course of the dealership
11:25:32AM 15 relationship. If we would have never sold product, then
16 clearly we've got a problem with the breach of contract but
17 the statute wouldn't apply. And here one of the parties falls
18 under that. One of the parties simply did not perform at all
19 in a dealership relationship. The other party did. The other
11:25:52AM 20 party is clearly bound by the statute.

21 THE COURT: Is there any case law on this?

22 MS. SHACKELFORD: Not a single case. As best we can
23 tell, the statute was born in Texas and has no history
24 elsewhere either. I think we've all looked. The problem with
11:26:06AM 25 Mr. Keenan's argument is that it ignores the fact that one of

1 the statutory causes of action is that you cannot terminate a
2 dealership without cause. They have both judicially admitted
3 that the contract creates a dealership between Gyro-Trac,
4 Inc., Gyro-Trac (USA), and ROWMEC. So, there's a judicial
11:26:30AM 5 admission that the dealership exists with ROWMEC and that
6 brings both entities under the contract whether they're
7 suppliers or not because they are part of a dealership
8 agreement. And there are several different places.

9 Now, I believe that both are suppliers because
11:26:48AM 10 under the contract both are obligated to supply. What they
11 did for their internal convenience is something else. But
12 they are both part of the dealership agreement. And under
13 Chapter 19 they are subject to liability for breaching the
14 dealership agreement without cause -- for terminating it
11:27:07AM 15 without cause. So, there are two issues under the statute,
16 one is the dealership, and the other is some of the other
17 provisions that talk about suppliers.

18 THE COURT: All right. Here's what I'd like to see:
19 By the end of the day I would like to see a one-page brief
11:27:22AM 20 from both sides on this issue. Since there's not any case
21 law, it shouldn't take you more than one page to layout
22 exactly what your positions are. I think I understand it.
23 And let me read those and let me go and read this statute a
24 little bit more closely. But let's do that by the end of the
11:27:38AM 25 day.

1 I know this affects the jury charge; so, we
2 need to get this decided.

3 MS. SHACKELFORD: That's one of the reasons we
4 wanted to bring it to up today.

11:27:47AM 5 Your Honor, I didn't know you were going to
6 rule on asking us for a one-page thing and I have a four-page
7 thing that is already prepared.

8 THE COURT: All right. Ms. Webb, you can have four
9 pages, if you need them.

11:27:59AM 10 Okay. Just give me something by the end of day
11 that I can read tonight.

12 MR. BANDAS: Electronically or present it to Rhonda?

13 THE COURT: It would best if you could give it to
14 Rhonda this afternoon and I can take it home this evening.

11:28:13AM 15 You can file it electronically as well. I can pull it up off
16 the Internet as well.

17 Anything else we need to talk about?

18 MR. BANDAS: One issue. What I thought we had
19 agreed upon at the pretrial conference was to the extent we
11:28:27AM 20 showed demonstrative exhibits to the jury that we would copy
21 each other with those demonstrative exhibits. We looked at
22 the defendant's opening and they had a lot of pictures and
23 graphs and that kind of thing and we think they're
24 demonstrative and we would like to get a copy of that.

11:28:41AM 25 THE COURT: I think that's fair. Any demonstrative

1 exhibits that you use, make a copy for the other side.

2 MR. LeBLANC: Okay.

3 MR. BANDAS: Thank you, Your Honor.

4 (Short break)

11:51:04AM 5 (Jury present)

6 THE COURT: All right. Mr. Bandas, are you ready to
7 proceed?

8 MR. BANDAS: Yes, I am, Your Honor. Thank you.

9 BY MR. BANDAS:

11:51:05AM 10 Q. Mr. O'Hagan, I want to talk to you now about the GT-25
11 tractors, okay? When did ROWMEC first learn that Gyro-Trac
12 was going to make a GT-25?

13 A. Not long after the settlement, after we had the initial
14 problems with the GT-18, when Jon Flournoy told me to hold off
11:51:29AM 15 they had a new tractor come out.

16 Q. How did you find out that Gyro-Trac was actually
17 producing GT-25's and had them ready for sale?

18 A. They had sold one in our area.

19 Q. What do you mean "your area"?

11:51:40AM 20 A. In our five-state dealer area.

21 Q. All right. And what was the customer that bought it?

22 A. Alan Davis.

23 Q. And did you have anything to do with that sale?

24 A. No.

11:51:51AM 25 Q. When was that sale? Do you remember?

1 A. No, sir.

2 Q. All right. At that point in time had Gyro-Trac ever sent
3 a GT-25 to ROWMEC on consignment?

4 A. No, sir.

11:52:11AM 5 Q. And when you found out about the Alan Davis sale, what
6 did you do?

7 A. I called and complained to Jon Flournoy.

8 Q. And tell us what was your complaint. What did you tell
9 him?

11:52:26AM 10 A. Well, we had converted the GT-18 demo machine to be for
11 all intents and purposes a GT-25 so that we could demo it. We
12 were doing some demos. They were telling us the 25 wasn't
13 ready yet. So, we didn't get any. But they sold one in our
14 area.

11:52:41AM 15 Q. And before that time did you -- you being ROWMEC -- have
16 any idea that the GT-25's were even in production and ready to
17 sell?

18 A. No.

19 Q. What did Mr. Flournoy do with your complaint?

11:52:54AM 20 A. I believe that's about the time that they sent us some
21 GT-25's because we had sold one to Wright's Tree Service.

22 Q. Was that around March or April of 2005?

23 A. Yes, sir.

24 Q. Now, what is it that you did with the machines that you
11:53:08AM 25 got?

1 A. We sold them.

2 Q. And which ones did you sell?

3 A. We sold the first two I believe -- the first one to
4 Johnny Johnson and then the next two to Wright's Tree Service.

11:53:22AM 5 Q. How long did it take you between getting a GT-25 and
6 being able to sell it?

7 A. Basically the same month that we got them we already had
8 one sold and two more right after that.

9 Q. So, if you had the tractors, were you able to sell them?

11:53:41AM 10 A. Yes, sir.

11 Q. And who bought your first GT-25?

12 A. I believe it was Johnny Johnson.

13 Q. And where is Johnny Johnson out of?

14 A. Lufkin, Texas.

11:53:49AM 15 Q. He's the gentleman we heard from yesterday?

16 A. Yes, sir.

17 Q. And who bought your next GT-25?

18 A. I'm pretty sure it was Wright's Tree Service.

19 Q. And what is Wright's Tree Service?

11:53:57AM 20 A. Wright's Tree Service is a company that does basically
21 right-of-way tree clearing all over the country.

22 Q. All right. And how big of a company is that, to your
23 knowledge?

24 A. In the electric utility right-of-way clearing, they're
11:54:13AM 25 probably up there around the third largest.

1 Q. How many machines did Wright's Tree Service buy from you?

2 A. They bought three total.

3 Q. And what kind of machines?

4 A. All GT-25's.

11:54:22AM 5 Q. All right. And generally speaking what was ROWMEC's
6 profit margin on those GT-25's?

7 A. 80, \$90,000.

8 Q. For each sale?

9 A. Yes, sir.

11:54:32AM 10 Q. So, was that a valuable business for ROWMEC?

11 A. Yes.

12 Q. Now, after those original GT-25's were sold, did ROWMEC
13 get any more consignment GT-25's from Gyro-Trac?

14 A. We finally ended up getting two but -- in about a
11:54:51AM 15 four-month period we sold the GT-25's that we sold. But
16 immediately after we sold the first ones is when the warranty
17 issues and the recall issues started again. So, we finally
18 got two machines that weren't already committed to sales but
19 we ended up having to use those to lend out to customers that
11:55:08AM 20 had purchased GT-25's that were failing in the field.

21 Q. All right. And, so, did that take that out of inventory
22 in terms of making sales?

23 A. Yes.

24 Q. Nevertheless, were you then able to sell those two
11:55:20AM 25 GT-25's as used machines?

1 A. Yes. Those two tractors, after we got the other tractor
2 straightened out and they came back, we were able to clean
3 those up and sell those to Wright's Tree Service as used
4 tractors.

11:55:32AM 5 Q. And you first started -- strike that.

6 Was March, April 2005 really the first time
7 that Gyro-Trac sent consignment machines to ROWMEC of any
8 kind?

9 A. Yeah, unless you split hairs. The first tractor was
11:55:50AM 10 already sold; so, it wasn't a consignment machine. It was
11 already committed to Johnny Johnson. So, for a very short
12 time we might have had one or two consignment machines.

13 Q. When you "split hairs," are you talking about a GT-25 in
14 the March, April 2005 time period?

11:56:05AM 15 A. Yes.

16 Q. All right. Before those GT-25's and looking at the time
17 period before that beginning with when the settlement
18 agreement was signed, had Gyro-Trac ever sent ROWMEC one
19 single consignment machine?

11:56:20AM 20 A. No, sir.

21 Q. When ROWMEC first got consignment machines of the GT-25
22 in April or March of 2005, how many sales did you make after
23 that?

24 A. I think it was five total of GT-25.

11:56:35AM 25 Q. All right. Was ROWMEC able to sell more GT-25's after

1 that before the dealership was terminated?

2 A. We definitely backed off a hair because of the warranty
3 issues and the recall issues. We were having so much trouble
4 keeping up to the ones that we had already sold, keeping them
11:57:02AM 5 running and keeping the customers happy, we were waiting to
6 see what the final outcome was going to be on the recall.

7 Q. Why was that important to ROWMEC?

8 A. Always the customer's first. And what was happening to
9 us is that the tractors were failing so often that we were
11:57:20AM 10 having trouble keeping those machines running that we had
11 already sold.

12 Q. And did you have conversations with anybody at Gyro-Trac
13 about this?

14 A. Yes.

11:57:28AM 15 Q. And who did you talk to?

16 A. Jon Flournoy, Odette, might have talked to Daniel but I'm
17 not sure.

18 Q. All right. And what did Mr. Flournoy say?

19 A. He said they were working on it, again be patient, it
11:57:43AM 20 will be taken care of.

21 Q. Did you and Mr. Flournoy have any disagreements about
22 whether or not to push sales during this time period?

23 A. Yes.

24 Q. Tell me about those disagreements.

11:57:53AM 25 A. He felt that we should keep on selling the way that we

1 were and I had a problem until we knew that the problems were
2 taken care of continuing to push those tractors in the market
3 and ending up with more problems that we couldn't keep up
4 with.

11:58:07AM 5 Q. All right. Now, towards the end of your relationship
6 with Gyro-Trac were some of those problems getting worked out
7 with the GT-25?

8 A. I really don't know. Because by the time they had taken
9 the dealership from us, I lost all contact. So, we didn't
11:58:27AM 10 know what was going on with them.

11 Q. All right. And did you nevertheless -- I know you are in
12 a lawsuit with them -- but did you nevertheless believe that
13 the Gyro-Trac had the ability to go out and improve these
14 machines?

11:58:37AM 15 A. Oh, yes, definitely. We knew there would be a learning
16 curve to put these new products on the market and that there
17 could possibly be some issues with the machines. We really
18 felt we could work through it. They were beautiful machines.
19 When they ran, I still don't believe there's another machine
11:58:57AM 20 on the market that will do the job that one of these tractors
21 will do.

22 Q. I just want to be clear. Does ROWMEC still wish it had
23 this dealership?

24 A. Yes.

11:59:04AM 25 Q. Now, let me ask you about pricing on the products that

1 you were getting from Gyro-Trac. Did you ever have pricing
2 issues with the Gyro-Trac companies?

3 A. Yes.

4 Q. What pricing issues did you have?

11:59:20AM 5 A. First, that we never did get our contractual lowest
6 wholesale minus 10 percent price.

7 Q. All right. And did Gyro-Trac ever tell you that they
8 had -- that they even had wholesale prices?

9 A. No.

11:59:38AM 10 Q. All right. Did they send you price sheets from time to
11 time?

12 A. Yes.

13 Q. Did they tell you whether or not they were wholesale
14 prices?

11:59:46AM 15 A. No.

16 Q. Did they tell you whether or not they were best available
17 wholesale prices?

18 A. No.

19 Q. Did they tell you whether or not they were best available
11:59:52AM 20 wholesale prices less 10 percent?

21 A. No.

22 Q. Did you ever -- did you always get the same price, for
23 example, on a GT-25?

24 A. No.

12:00:01PM 25 Q. What were some of the different prices you got on the

1 GT-25?

2 A. I think it went anywhere from 192 to 216 to 232 in there
3 some where.

4 Q. Did anyone ever tell you why the prices went up or down?

12:00:17PM 5 A. No.

6 Q. Did anybody ever tell you that whatever the price was
7 their best available wholesale price less 10 percent.

8 A. They just told us that was our price.

9 Q. Did they ever tell you what they were charging other
10 retail customers?

11 A. No.

12 Q. All right. Through this period of time, Mr. O'Hagan, to
13 your knowledge did Gyro-Trac have any other dealers other than
14 ROWMEC?

12:00:42PM 15 A. No.

16 Q. All right. For you to determine whether or not ROWMEC
17 was getting best available wholesale price less 10 percent,
18 would you have to know something about what Gyro-Trac was
19 charging other customers?

12:01:02PM 20 A. Yes.

21 Q. And was that information that Gyro-Trac shared with you
22 before the dealership was terminated?

23 A. No.

24 Q. And was that something they shared with you before this
12:01:12PM 25 lawsuit was filed?

1 A. No.

2 Q. Since then have you learned whether or not Gyro-Trac was
3 charging other people less money retail for the same tractors
4 they were selling to you wholesale?

12:01:27PM 5 A. Yes.

6 Q. Can you give us some examples of that?

7 A. I just know there was a list of like 11 machines that
8 were sold before we ever received a machine and the pricing
9 was substantially lower than what we were being charged.

12:01:39PM 10 Q. There were some prices substantially lower after you
11 bought your GT-25's; is that right?

12 A. Yes.

13 Q. There were some lower before some of your GT-25
14 purchases?

12:01:52PM 15 A. Yes.

16 Q. Would you describe that as prices as just kind of all
17 over the board?

18 A. Yes.

19 Q. Now, is pricing one of the issues that ROWMEC is
12:01:59PM 20 complaining about with respect to the bill?

21 A. Yes.

22 Q. And did you personally go through and look at the
23 different prices that had been charged to other customers?

24 A. Yes.

12:02:15PM 25 Q. All right. Now, did anybody in your company do that work

1 more closely than you did?

2 A. Yes. My sister-in-law Karen.

3 Q. And who is Karen?

4 A. My sister-in-law.

12:02:25PM 5 Q. Karen O'Hagan?

6 A. Karen O'Hagan.

7 Q. And what is Ms. Karen O'Hagan's role in the business?

8 A. Actually, we asked her to come back and work for the
9 company just to help us get to the bottom of the bill and find

12:02:41PM 10 out where the mistakes were and why it was so far off.

11 Q. And how long did it take her to do that?

12 A. A year.

13 Q. Was she able to do that with just the information that
14 Gyro-Trac had supplied before this lawsuit was filed?

12:02:54PM 15 A. No. No.

16 Q. Was she able to get enough information afterwards to
17 finish her analysis of the bill?

18 A. To work on it some more, yes. Through discovery there's
19 been more information that she could use to get the bill

12:03:09PM 20 closer to what it should be.

21 Q. To your factual knowledge, did she make an attempt to
22 figure out whether or not there WAS overcharges in machines?

23 MR. KEENAN: Same objection.

24 THE COURT: Overruled.

12:03:27PM 25 A. Yes.

1 BY MR. BANDAS:

2 Q. And do you know generally what number she came up with?

3 A. I think it was 200 -- it was over 250,000.

4 Q. And to your factual knowledge, what does that number

12:03:44PM 5 represent?

6 A. The amount of money we were overcharged for the tractors
7 that we purchased.

8 MR. BANDAS: May I approach the easel, Your Honor?

9 THE COURT: Yes.

12:04:00PM 10 BY MR. BANDAS:

11 Q. Now, Mr. O'Hagan, do you remember earlier when we talked
12 about the different items that you thought should come off the
13 bill?

14 A. Yes.

12:04:06PM 15 Q. This issue with respect to overcharges that Ms. O'Hagan,
16 your sister-in-law, did, is that something that you think
17 could have affected the bill as well?

18 A. Yes.

19 Q. Even if we don't take that off this bill, right here, do
12:04:22PM 20 we still have the bill well under the 500,000-dollar credit
21 line?

22 A. Yes.

23 Q. And whether or not -- you said the overcharges were
24 approximately \$250,000?

12:04:37PM 25 A. Between 250 and 280, I believe.

1 Q. To your knowledge, whether or not that's a good number or
2 high or low for overcharges, does that just depend on looking
3 at the different sales prices and figuring out what is an
4 appropriate wholesale price less 10 percent?

12:04:55PM

5 A. Yes.

6 Q. As you're sitting here today, has anybody ever told you
7 what's the right wholesale price less 10 percent?

8 A. No.

12:05:07PM

9 Q. Has anybody ever told Ms. O'Hagan what is the right
10 wholesale price less 10 percent?

11 A. No.

12 Q. So, whether it should be 250 or a little higher or a
13 little lower, is it nevertheless ROWMEC's position that there
14 ought to be some accommodation in this bill for pricing
15 issues?

12:05:19PM

16 A. Yes.

17 Q. All right. Now, similarly on cutter teeth and other
18 parts and equipment, do you have factual knowledge about
19 whether or not there were potentially overcharges on parts and
20 teeth?

12:05:40PM

21 A. Yes. That's initially what made us start looking at the
22 bill thinking that it was wrong.

23 Q. And who was it mainly that did that work?

12:05:52PM

24 A. Patty Curran, myself, and my son all had something to do
25 with what the billing was.

1 Q. And then later did your sister-in-law, Karen O'Hagan,
2 become involved?

3 A. Yes.

4 Q. And to your knowledge did she come up with some
12:06:00PM 5 calculations about what the overcharges were just on parts and
6 teeth and that type of thing?

7 A. Yes.

8 Q. And more or less what was that number?

9 A. I think it was 75, 78,000, something like that.

12:06:13PM 10 MR. BANDAS: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MR. BANDAS:

13 Q. And, again, whether or not Gyro-Trac had an actual best
14 available wholesale price less 10 percent on cutter teeth and
12:06:34PM 15 parts, to your knowledge was that ever communicated to ROWMEC?

16 A. No.

17 Q. Okay. So, whether that number is exactly right, it ought
18 to be higher or lower, can ROWMEC even say?

19 A. No.

12:06:45PM 20 Q. But nevertheless, do you believe that the overpricing on
21 the teeth and the parts should at least have been considered
22 in some form in looking at the bill?

23 A. Yes.

24 Q. Okay. Just so we have a summary, is it ROWMEC's position
12:06:59PM 25 that these things for sure ought to come off the bill?

1 A. Yes.

2 Q. Is it ROWMEC's position that these things here, the
3 overcharges and the pricing issues, at least merit
4 consideration in looking at this bill?

12:07:10PM 5 A. Yes.

6 Q. Okay. To clarify some things, Mr. O'Hagan, were the
7 billing issues something that just sprung up out of the blue
8 at the end of the dealership term between ROWMEC and the
9 Gyro-Trac companies?

12:07:37PM 10 A. No. It started almost immediately.

11 Q. It started almost immediately?

12 A. Yes.

13 Q. Give me some examples of what would come up.

14 A. We knew from the start that we weren't getting the proper
12:07:48PM 15 discount on cutter teeth and parts as soon as we started
16 buying them.

17 Q. Did ROWMEC sit idly by and not tell anybody about it?

18 A. No.

19 Q. What did you do?

12:07:58PM 20 A. We sent letters and e-mails back and forth to Odette and
21 Jon Flourney.

22 Q. Did you just send a couple of e-mails or....

23 A. No. I think it ended up being 80 or 90 back and forth.

24 Q. All right. Were there telephone conversations between
12:08:12PM 25 the bookkeeping folks and your office and the bookkeeping

1 folks in Gyro-Trac's office?

2 A. Yes.

3 Q. And who were the parties of those conversations?

4 A. Initially Patty Curran and Dawn Wright, I believe, were
12:08:25PM 5 the main two.

6 Q. How did those conversations go? Were they able to get to
7 the bottom of it?

8 A. No, not much help at all from Dawn Wright.

9 Q. And during the term of the dealership relationship

12:08:37PM 10 between ROWMEC and Gyro-Trac, was there continual requests for
11 information by ROWMEC?

12 A. Yes.

13 Q. And to your knowledge did ROWMEC ever get the information
14 it needed to figure out the bill?

12:08:51PM 15 A. Not until after discovery.

16 Q. All right. And let me just ask you a question point
17 blank. You heard in opening, Mr. O'Hagan, that you took a
18 bunch of machines and you sold them and you just pocketed the
19 money.

12:09:07PM 20 A. Yes, sir.

21 Q. Do you remember that?

22 A. Uh-huh.

23 Q. Is that what happened?

24 A. No, sir.

12:09:13PM 25 Q. What happened here?

1 A. Again, we were trying to work out -- we had some
2 differences starting in the beginning. We were trying to
3 build a business relationship. It got to a point where we
4 didn't know what to do. We had talked continually to their
12:09:30PM 5 accounting department and to Odette about the billing issues
6 and the pricing issues. We just didn't know what else to do.
7 So, definitely we stopped paying hoping that would get their
8 attention. That didn't actually work. So, it's part of what
9 this lawsuit was filed for, to try to get all these problems
12:09:53PM 10 straightened out and continue on in business, but that didn't
11 work. They just took away our dealership.

12 Q. And at that time when you put the brakes on paying, like
13 you just described, what was the reason for that?

14 A. Because the bill was getting so far out of hand.

12:10:07PM 15 Q. At that point in time were you well-satisfied that when
16 you made that call the bill was well under \$500,000?

17 A. Yes.

18 Q. All right. Now, let's talk about this 500,000-dollar
19 line or help or maybe even gift as Mr. Gaudreault described it
12:10:27PM 20 in his deposition. What was that?

21 A. Mr. Gaudreault had offered that personally to me for
22 ROWMEC as a help to get the whole dealership thing started,
23 get it going.

24 Q. All right. Did you and he have any conversations about
12:10:42PM 25 the terms of that help?

1 A. No. There were never terms discussed.

2 Q. Did he tell you how much you had to pay and when, whether
3 it was a percentage of the balance or anything like that?

4 A. No.

12:10:52PM 5 Q. All right. And when the dealership was terminated, had
6 anybody from Gyro-Trac told you, we withdraw the
7 500,000-dollar line or whatever you want to call it?

8 A. No.

9 Q. All right. And, so, when these billing issues came up
12:11:08PM 10 with Gyro-Trac, had anybody told you the 500,000-dollar line
11 or credit extension was no longer in effect?

12 A. No.

13 Q. And did they always talk to you as if it was always in
14 effect?

12:11:23PM 15 A. Yes. When we started any discussions about the bill, it
16 was to get it under the 500,000.

17 Q. All right. I also want to talk about some of the
18 allegations that have been made against ROWMEC in the
19 termination letter and one of them was, if you recall, failure
12:11:50PM 20 to properly train and supervise sales staff. What's your
21 answer to that?

22 A. We have been selling this equipment for close to 30
23 years. When though we had a pretty good way to do it. When
24 we had equipment available, we did do it. We still maintain
12:12:03PM 25 some of our original customers. So, I think we had a pretty

1 good idea about how to do it. I'm not saying we weren't open
2 to some new ideas. There's always things out there that you
3 haven't thought of. But I thought we were doing a pretty good
4 job.

12:12:17PM 5 Q. Have you ever not sold a machine that you had an
6 opportunity to sell?

7 A. No.

8 Q. All right. Now I want to talk about some specific
9 customer issues. We've heard testimony in this case that Alan
12:12:33PM 10 Davis is one of the folks that complained about you. Who is
11 Alan Davis?

12 A. Alan Davis was a customer that we didn't find, that
13 Gyro-Trac actually sold him the machine. We didn't know
14 anything about Alan Davis until after he had already gotten
12:12:48PM 15 his machine. Most of the contact we had with him is I went up
16 and did a 50-hour service on his Gyro-Trac after he purchased
17 it. Of course, then, we had more occasion to speak to him
18 when his tractor started going down.

19 Q. Was that before or after Gyro-Trac had already made the
12:13:05PM 20 sale?

21 A. After.

22 Q. Before Gyro-Trac made the sale to him, did you even know
23 Alan Davis?

24 A. No, never heard of him before.

12:13:13PM 25 Q. Had you ever had any communications with him?

1 A. No.

2 Q. After Gyro-Trac made the sale, did Alan Davis ever
3 complain to you about your service?

4 A. No.

12:13:24PM 5 MR. KEENAN: Objection, Your Honor, hearsay.

6 MR. BANDAS: Your Honor, we're talking factually
7 what occurred and what's relevant to their reasons for
8 terminating and I think we have the right to rebut.

9 THE COURT: Overruled.

12:13:39PM 10 BY MR. BANDAS:

11 Q. Did Alan Davis ever make any complaints to you about your
12 service?

13 A. No. He did complain about the tractor going down as much
14 as it did. He was one of the customers that we actually

12:13:51PM 15 had -- he bought a GT-25. He started having problems with the
16 undercarriage. First, we were told to let him borrow the

17 GT-18 until we could get his tractor fixed. We took the GT-18
18 to Arkansas. It went down for the same reasons. So, then,

19 that's when we took one of the brand-new GT-25's and took that
12:14:12PM 20 to him to use until his original unit was fixed.

21 Q. How much was he paying for that machine?

22 A. I'm not dead sure of the price but it would have been
23 around 270,000.

24 Q. Was he frustrated with having a 270,000-dollar machine
12:14:27PM 25 that was broken down?

1 A. He was very upset.

2 Q. Did you see him upset?

3 A. Yes.

4 Q. Did he ever tell you this is ROWMEC's fault?

12:14:34PM 5 A. No.

6 Q. All right. Now, let's talk about Stanley Tew. We've
7 heard testimony in this case that Stanley Tew is one of the
8 fellows that complained about you. Do you remember that?

9 A. Yes, sir.

12:14:48PM 10 Q. Who is Stanley Tew?

11 A. Stanley Tew was another customer that Gyro-Trac sold to
12 in Arkansas.

13 Q. How did you meet Mr. Tew?

14 A. After they made the sale, they called and asked would we
15 do the delivery on the tractor.

12:15:00PM

16 Q. After who made the sale?

17 A. After Gyro-Trac made the sale.

18 Q. Did they tell you that they were making the sale
19 beforehand?

12:15:08PM 20 A. No.

21 Q. Was it in your exclusive territory?

22 A. Yes.

23 Q. Then what did they ask you to do, "they" being Gyro-Trac?

24 A. They asked us to do the initial service on the tractor

12:15:17PM 25 and deliver it to Mr. Tew in Arkansas.

1 Q. Did you agree to do that?

2 A. Yes.

3 Q. And before Gyro-Trac made the sale to Mr. Tew or made the
4 deal to make the sale to Mr. Tew, had you ever met Mr. Tew
12:15:30PM 5 before?

6 A. No.

7 Q. After that time period did Mr. Tew ever complain to you
8 about ROWMEC's service?

9 A. Only, again, about the breakdowns, not about how we
12:15:39PM 10 handled them.

11 Q. Okay.

12 A. Definitely was not happy, as Alan Davis was not happy.

13 Q. All right. Mr. Johnny Johnson?

14 A. Yes.

12:15:48PM 15 Q. We've heard the defendant say that he's one of the
16 fellows that complained about you, also.

17 A. Yes.

18 Q. Did Mr. Johnson ever complain to you about ROWMEC's
19 service?

12:15:57PM 20 A. No, other than the fact that we had come out there so
21 much.

22 Q. All right. Is this the same Mr. Johnson that we watched
23 on videotape deposition yesterday?

24 A. Yes.

12:16:06PM 25 Q. Who is Kris Knackstead?

1 A. Kris Knackstead was originally a customer of ours that we
2 had sold a used GT-10 to -- GT-10 machine to.

3 Q. There's been an allegation in this case that
4 Mr. Knackstead said you competed with him on a contract. Are
12:16:27PM 5 you familiar with that?

6 A. Yes.

7 Q. What really happened?

8 A. In our business because the tractors are fairly unknown,
9 they're getting more known now, but a lot of people didn't

12:16:39PM 10 know what they were, sometimes we would get involved in an
11 extended demo. In most cases a demo is a two- to four-hour

12 affair with the machine and the customer is watching. But

13 because of the initial problems that the Gyro-Tracs had

14 originally when we first purchased them, especially in our

12:16:57PM 15 area, people knew what kind of problems they could have with

16 them; so, they wanted two- to four-day demos. What we did to

17 try to keep people from calling for demos just to get, say,

18 their back five acres cleared, which does happen, you have to

19 be careful, with Jon Flournoy and Daniel's blessing, we would

12:17:17PM 20 charge a minimum fee on anything over a one-day demo. Because

21 some of these demos, like Mr. Knackstead's, was a four-hour

22 trip from our shop to take these machines up there. And not

23 Mr. Knackstead's case, and I'm not sure of the name of the

24 he's talking about, but the instance that's he's talking about

12:17:37PM 25 the man wanted a four-day demo. So, we charged him a minimum

1 amount. And what we would do with that money is if they
2 purchased the machine, that money would come straight off the
3 top of the price of the machine. If they didn't purchase the
4 machine, it would help us with the consumables and the fuel
12:17:51PM 5 and the man hours to go up there and do an extended demo.
6 Just a set of cutter teeth on one of these machines is well
7 over a thousand dollars. So, you use up a set of teeth on a
8 demo. So, we were trying to at least not go as far in the
9 hole on the demos.

12:18:07PM 10 Q. Was that done with Gyro-Trac's permission?

11 A. Yes, definitely.

12 Q. Have you done, ever, any demos that Jon Flournoy or
13 Gyro-Trac didn't know about?

14 A. No.

12:18:18PM 15 Q. Have you ever done any demos that they didn't approve?

16 A. No.

17 Q. So, if you were demoing a machine someplace, would that
18 have been with Gyro-Trac's specific approval for that specific
19 demo?

12:18:29PM 20 A. Yes.

21 Q. I want to talk a little bit about the termination. And
22 the testimony in this case has been that that occurred in
23 February of 2006. Before that letter of termination came, did
24 anybody at Gyro-Trac ever pick up the phone and call you and
12:18:57PM 25 say, "We're thinking about terminating this dealership"?

1 A. No.

2 Q. All right. What conversations did you have with anybody
3 at Gyro-Trac about terminating the dealership?

4 A. None at all. The only conversations I had with Jon
12:19:12PM 5 Flournoy even in that respect were that if we didn't get
6 control of the bill they would put us on COD.

7 Q. We heard testimony yesterday from Mr. Flournoy that he
8 had a meeting with you and talked about your attitude and said
9 he might have to terminate the dealership. Did that ever
12:19:28PM 10 happen?

11 A. No. I'm not sure where that came from at all. Did we
12 have disagreements on how the sales should be handled because
13 of the problems we were having with the tractors at the time?
14 Yes, definitely, we had disagreements about that.

12:19:42PM 15 Q. All right. I also want to talk about what sales ROWMEC
16 thinks it could have made had it kept this dealership.

17 A. Yes, sir.

18 Q. Now, generally speaking when ROWMEC sells a machine or a
19 product, what's it's generally profit margin?

12:20:02PM 20 A. Profit dollar wise or profit margin?

21 Q. Profit margin maybe as a percentage.

22 A. It should have been 30 percent.

23 Q. Where does that 30 percent number come from?

24 A. From the contract.

12:20:13PM 25 Q. Well, historically has ROWMEC earned more or less 30

1 percent profit on its products?

2 A. Yes.

3 Q. All right. And for how long has that been true?

4 A. As long as we've been selling equipment.

12:20:27PM 5 Q. And did anybody from ROWMEC ever talk to anybody about
6 the 30-percent profit margin with someone at Gyro-Trac?

7 A. Yes.

8 Q. Who had those conversations?

9 A. Myself with Jon Flournoy, also with Daniel, and Odette.

12:20:43PM 10 Q. And tell me what conversations you had.

11 A. Just we wondered why we weren't getting our proper
12 markup.

13 Q. And did you have conversations with them about an
14 expectation to have a 30-percent profit margin?

12:20:56PM 15 A. Yes.

16 Q. All right. And what was their response to that?

17 A. I can't remember right now. I'm a little foggy.

18 Q. Did you complain to them that you weren't making 30
19 percent?

12:21:14PM 20 A. Yes, definitely.

21 Q. All right. Is that part of the conversations you had in
22 complaining about the bill?

23 A. Yes.

24 Q. All right. Now, when you had sold before New Holland
12:21:26PM 25 tractors or Caterpillar tractors, what was ROWMEC's historical

1 profit margin?

2 A. You were always aiming for 30 percent at least.

3 Q. Is that standard in your industry?

4 A. Pretty much.

12:21:37PM 5 Q. Has that been historically true for ROWMEC on a
6 particular product?

7 A. Yes.

8 Q. All right. Now, you understand that one of the claims
9 that ROWMEC is making in this lawsuit is that losing the
10 dealership impeded or cost ROWMEC the ability to make sales in
11 the future. Do you understand that?

12 A. Yes.

13 Q. If you would, Mr. O'Hagan, can you tell us what are some
14 of the sales that you know about that you feel that ROWMEC
15 could have made in the future?

16 A. One of the first would have been with Wright's Tree
17 Service.

18 Q. Tell me more about that.

19 A. He called me and told me that he was in the --

12:22:22PM 20 MR. KEENAN: Objection, Your Honor. It's hearsay.

21 MR. BANDAS: Your Honor, this has to do with intent
22 which is relevant to economic loss.

23 MR. KEENAN: What?

24 THE COURT: Sustained.

12:22:36PM 25 BY MR. BANDAS:

1 Q. Mr. O'Hagan, what sales do you believe you could have
2 made to Wright's Tree Service?

3 A. We ave missed three sales not long after the dealership
4 was taken away.

12:22:46PM 5 Q. All right. And how do you know that?

6 A. Because they actually went out and bought competitors'
7 machines. I had spoken to Mr. Myers.

8 MR. KEENAN: Objection, Your Honor. It's hearsay
9 and speculation.

12:22:55PM 10 MR. BANDAS: May we approach, Your Honor?

11 THE COURT: No. I'm going to sustain the objection
12 as to hearsay.

13 BY MR. BANDAS:

14 Q. All right. And what other machines do you think ROWMEC
12:23:07PM 15 could have sold going into the future?

16 MR. KEENAN: Objection, Your Honor. It calls for
17 speculation.

18 MR. BANDAS: Your Honor --

19 THE COURT: Establish a basis, Mr. Bandas.

12:23:22PM 20 MR. BANDAS: That's what I was trying to do, Your
21 Honor.

22 THE COURT: Other than hearsay.

23 MR. BANDAS: Okay.

24 BY MR. BANDAS:

12:23:28PM 25 Q. What would be your basis for projecting sales in the

1 future?

2 A. What we've done in the past, basically on 20 years of
3 experience. Am I allowed to answer?

12:23:46PM

4 Q. Yeah. Just go ahead and answer and tell us what your
5 basis is.

6 A. What we had sold in the time period that we had access to
7 GT-25's and what we had talked to customers about in the
8 market, we felt strongly that we could do at least ten a year.

12:24:18PM

9 Q. All right. What business is ROWMEC engaged in now that
10 it's lost the dealership?

11 A. We're trying to back up and rebuild our sales of the
12 units we were building before that.

13 Q. Is ROWMEC still in the service business?

14 A. Yes.

12:24:29PM

15 Q. And please tell us what is the service business.

16 A. We work on not only our machines that we've sold but
17 competitors' machines for our customers, which would be more
18 localized customers.

12:24:44PM

19 Q. All right. And just one question I forgot to ask you
20 yesterday. Were you honorably discharged from the Marine
21 Corps?

22 A. Yes, sir.

23 MR. BANDAS: Pass the witness, Your Honor.

24 THE COURT: All right. Cross-examination?

12:24:53PM

25 MR. KEENAN: Yes, Your Honor. May I use the podium?